

**RECORD OF TRIAL  
COVER SHEET**

**IN THE  
MILITARY COMMISSION  
CASE OF**

**UNITED STATES  
V.  
BINYAM AHMED MUHAMMAD**

**ALSO KNOWN AS:**

**TALHA AL KINI  
FOAUD ZOUAOUI  
TAHA AL NIGERI  
JOHN SAMUEL**

**No. 050009**

**Military Commission Order No. 1, para. 6(D)(5) (Aug. 31, 2005)  
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record of trial. A copy of the redacted version of this record of  
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**VOLUME \_\_\_\_ OF \_\_\_\_ TOTAL VOLUMES**

**1<sup>ST</sup> VOLUME OF TRANSCRIPT**

**R. 1-255**

**APRIL 6, 2006 SESSION**

**United States v. Binyam Ahmed Muhammad, No. 050009**

A more detailed index for each volume is included at the front of the particular volume concerned. An electronic copy of the redacted version of this record of trial is available at <http://www.defenselink.mil/news/commissions.html>.

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Transcript and Review Exhibits are part of the record of trial, and are considered during appellate review. Volumes I-VI, however, are allied papers and as such are not part of the record of trial. Allied papers provide references, and show the administrative and historical processing of a case. Allied papers are not usually considered during appellate review. *See generally United States v. Gonzalez*, 60 M.J. 572, 574-575 (Army Ct. Crim. App. 2004) and cases cited therein discussing when allied papers may be considered during the military justice appellate process, which is governed by 10 U.S.C. § 866). For more information about allied papers in the military justice process, see Clerk of Military Commission administrative materials in Volume III.

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**SUBSTANCE OF CONTENTS**

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**ALLIED PAPERS** Not part of “record of trial”

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|------------------|---|
| I <sup>1</sup>   | Military Commission Primary References (Congressional Authorizations for Use of Force; Detainee Treatment Act; UCMJ articles; President's Military Order; Military Commission Orders; DoD Directive; Military Commission Instructions; Appointing Authority Regulations; Presiding Officer Memoranda—includes DoD rescinded publications) |
| II <sup>1</sup>  | Supreme Court Decisions: <i>Rasul v. Bush</i> , 542 U.S. 466 (2004); <i>Johnson v. Eisentrager</i> , 339 U.S. 763 (1950); <i>In re Yamashita</i> , 327 U.S. 1 (1946); <i>Ex Parte Quirin</i> , 317 U.S. 1 (1942); <i>Ex Parte Milligan</i> , 71 U.S. 2 (1866)   |
| III <sup>1</sup> | DoD Decisions on Commissions including Appointing Authority orders and decisions, Chief Clerk of Commissions documents  |

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<sup>1</sup> Interim volume numbers. Final numbers to be added when trial is completed

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<sup>2</sup> Interim volume numbers. Final numbers to be added when trial is completed.

# **VOLUME I OF TRANSCRIPT**

## **United States v. Binyam Ahmed Muhammad**

### **Index of Transcript**

#### **FIRST SESSION:**

**April 6, 2006**

<b><u>DESCRIPTION</u></b>	<b><u>PAGE #</u></b>
List of Persons Present at Hearing	<a href="#"><u>1, 6-7</u></a>
Appointing Orders presented to Commission ( <a href="#"><u>REs 5, 44 &amp; 45</u></a> )	<a href="#"><u>2-5</u></a>
President's Reason To Believe Determination presented to Commission ( <a href="#"><u>RE 1</u></a> )	<a href="#"><u>6</u></a>
Charge Sheet ( <a href="#"><u>RE 2</u></a> ), Approval of Charges ( <a href="#"><u>RE 3</u></a> ), and Referral to trial presented to Commission ( <a href="#"><u>RE 4</u></a> )	<a href="#"><u>6</u></a>
Charges were served in English, the Accused's native language	<a href="#"><u>6</u></a>
Major Yvonne Bradley and Mr. Stafford-Smith are present for the Defense	<a href="#"><u>7</u></a>
Parties were previously sworn	<a href="#"><u>7</u></a>
Prosecutors were properly appointed ( <a href="#"><u>RE 6</u></a> ) and sworn	<a href="#"><u>8</u></a>
Defense Counsel was properly appointed ( <a href="#"><u>RE 7</u></a> ), but Major Bradley informed the Presiding Officer she was concerned about her qualifications to act as the Accused's counsel because of a pending conflict of interest issue.	<a href="#"><u>9-10</u></a>
Mr. Stafford-Smith and Professor Marguiles were in court, but not at counsel table	<a href="#"><u>10-11</u></a>
Major Bradley declined to answer the Presiding Officer's question about whether she is aware of any physical or medical reason	

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why Mr. Stafford-Smith and Professor Marguiles are unable to move to the counsel table.	<a href="#"><u>12-13</u></a>
Commission translators were appointed.	<a href="#"><u>14</u></a>
The Accused stated he is not “Binyam Ahmed Muhammad” (R. 16).	
The Presiding Officer asked Major Bradley whether the Accused understood English, she responded, “Mr. Muhammad speaks for himself. I have a conflict issue that has prevented me – at this point, to not qualify as his counsel.”	<a href="#"><u>18</u></a>
The Presiding Officer asked Major Bradley whether the Defense had coordinated for a Defense translator for the proceeding, but Major Bradley redirected the question to the Accused.	<a href="#"><u>19</u></a>
Presiding Officer explains the Accused’s rights to Detailed Military Defense Counsel. The Accused said he was not Mr. Muhammad, and that the Government had the wrong person after “4 years of torture and renditions.” The Accused repeatedly insisted that he was not the Muhammad on the charge sheet.	<a href="#"><u>21-25</u></a>
The Presiding Officer explained the presumption of innocence, and the responsibility of the Commission to require proof beyond a reasonable doubt, and his responsibility to ensure the Accused receives a full and fair trial. The issue of the Accused’s identity would be developed or resolved during the trial.	<a href="#"><u>26-31</u></a>
The Presiding Officer re-explained the Accused’s rights to Detailed Military Defense Counsel and Selected Military Defense Counsel.	<a href="#"><u>31-34</u></a>
The Presiding Officer explained the Accused’s rights to Civilian Defense Counsel (CDC) at no expense to the Government. The CDC must be an American citizen.	<a href="#"><u>35-37</u></a>
The Accused said that Major Bradley was under orders to be his enemy, and he was unsure about trusting her. He would also	

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have the same problem of trust with any American citizen.	<a href="#"><u>38-40</u></a>
The Accused said he understood he rules in regard to representation by Civilian Defense Counsel.	<a href="#"><u>42</u></a>
The Accused said that the civilian lawyers and Major Bradley are his advisors and not his lawyers, and they could not talk on his behalf (R. 43). The Accused said Major Bradley had a conflict for two months now and repeated that she could not speak on his behalf (R. 44). The Presiding Officer stated that Major Bradley, "Right now, she is your Detailed Defense Counsel." (R. 45).	<a href="#"><u>43-47</u></a>
The Presiding Officer explained the Accused's rights to Detailed Military Defense Counsel, Selected Military Counsel, and Civilian Defense Counsel.	<a href="#"><u>49-51</u></a>
The Accused said he had no rights, and he had no questions.	<a href="#"><u>51-52</u></a>
The Accused asked to represent himself (R. 54). He declined counsel. The Accused stated that if Major Bradley wins the case, she becomes the enemy of America (R. 54).	<a href="#"><u>54-56</u></a>
The Accused said he did not want Mr. Stafford-Smith and Professor Marguiles to communicate to the Commission, but they could be his advisors.	<a href="#"><u>56-60</u></a>
The Presiding Officer explained that Civilian Defense Counsel (CDC) had filed matters with the Commission, and they could not do so unless they were representing the Accused (R. 61). The Accused maintained that he did not want CDC to represent him, but to act as an advisor, and they were not permitted to talk to the Commission (R. 62-63). The Accused said he authorized CDC to file motions (R. 66). The Accused said he believed representation meant representation in the hearing room, which he did not want CDC to do (R. 66-67). The Presiding Officer explained that CDC could not file matters unless they represented the Accused, and if	

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they represented him, they must sit at counsel table (R. 67).	<a href="#"><u>62-67</u></a>
Major Bradley asked the Presiding Officer to permit the Accused to have legal advisors from outside the courtroom, noting that this issue was not addressed in Commission law. Major Bradley asked for an opportunity to brief the issue.	<a href="#"><u>71-74</u></a>
The Presiding Officer explained that Defense Counsel for representation are required to attend all hearings, unless excused by the Presiding Officer.	<a href="#"><u>74-75</u></a>
The Presiding Officer stated that unless the Accused requested otherwise, or the Presiding Officer excused her, he would be represented by Detailed Military Defense Counsel, Major Bradley.	<a href="#"><u>77-78</u></a>
The Accused said the Commission was actually a con-mission, designed to con the world. The Accused made some statements about America's goals in the war, and nations with or without nuclear weapons. He urged the Presiding Officer to be fair and act in a way that would make his family proud.	<a href="#"><u>79-88</u></a>
The Presiding Officer explained to the Accused that he was not permitted to wave or put up signs in court, and that his rulings were not limited to the Presiding Officer Memoranda.	<a href="#"><u>87-90</u></a>
The Presiding Officer told the Accused not to mention the Presiding Officer's family, not to compare the Presiding Officer to historical figures, or to use words like "crap."	<a href="#"><u>90-93</u></a>
The Accused responded to the Presiding Officer's question about representation by stating that he did not desire CDC representation, and instructed them not to sit at counsel table.	<a href="#"><u>94-95</u></a>
The Accused asked to reserve his decision because he was confused. He said he had received different information from the lawyers.	<a href="#"><u>96</u></a>

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<b>The Presiding Officer explained that perhaps CDC could act in an advisory fashion, but it would not involve filing matters with the Commission or appearing before the Commission on his behalf.</b>	<b><u>97</u></b>
<b>The Presiding Officer said that absent a request from the Accused, he would rule that Major Bradley was the sole counsel representing the Accused. The Accused responded that he could not answer the question on requested counsel.</b>	<b><u>98</u></b>
<b>After Major Bradley requested more time for the Accused to think about it, the Presiding Officer indicated that the only person representing the Accused was Major Bradley.</b>	<b><u>98-99</u></b>
<b>The Accused requested clarification on the role of CDC, and the Presiding Officer explained that counsel for representation are the only parties permitted to file matters and appear before the Commission (R. 100). The Accused asked that the CDC be permitted to represent him at the hearing (R. 102-104). The Accused said the next time he came in he would give a final decision on representation (R. 105).</b>	<b><u>100-105</u></b>
<b>The Accused requested to be lead counsel.</b>	<b><u>108</u></b>
<b>CDC stated their qualifications to be counsel for the Accused.</b>	<b><u>108-114</u></b>
<b>The Presiding Officer stated that the Accused understands and speaks English, but informed the Defense that the Accused had an absolute right to a Defense Interpreter. The request for such an interpreter must simply be timely.</b>	<b><u>114-118</u></b>
<b>The Presiding Officer explained to the Accused the rules of dress, and stated that the Accused appeared to be wearing orange prison garb. Major Bradley indicated the Accused wanted to talk about his cultural garb.</b>	<b><u>120-118</u></b>
<b>The Presiding Officer counseled Major Bradley about her</b>	



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demeanor when addressing the Presiding Officer.	<a href="#"><u>124-127</u></a>
The Presiding Officer asked Major Bradley about the Accused's clothing, and Major Bradley stated, "My position is that Mr. Muhammad can explain the cultural dress." (R. 130). The Presiding Officer directed Major Bradley to address the question (R. 130-131). Major Bradley said she did not think about anyone mistaking appellant's cultural clothing for prison garb (R. 131). The Presiding Officer instructed Major Bradley to be careful about the possible prejudicial effect on Commission members of such clothing, but the choice of cultural clothing is a defense decision (R. 131-133). Major Bradley said that the Accused's choice of clothing was cultural (R. 135), and noted that he also wanted to wear shackles to the hearing (R. 136). Major Bradley requested that the Accused make a statement about his cultural clothing, and the Presiding Officer said that the Defense could put it in a motion (R. 137).	<a href="#"><u>130-137</u></a>
The Presiding Officer said he was not prejudiced by the Accused's clothing.	<a href="#"><u>138</u></a>
Prior to the hearing, the CDC made a request for an ex parte hearing ( <a href="#"><u>RE 29</u></a> ), and then withdrew the request ( <a href="#"><u>RE 40</u></a> ). The unredacted version of RE 40 is ( <a href="#"><u>RE 41</u></a> ). The Defense indicated the redacted portion was privileged and the Presiding Officer directed that it be sealed (R. 141).	<a href="#"><u>138-141</u></a>
The Presiding Officer determined there was no clear conflict of interest, and no ethical dilemma (R. 142). No competent authority found a conflict of interest (R. 142). The Presiding Officer stated that the issue was not properly raised as a motion under POM 4-3 (R. 143).	<a href="#"><u>142-143</u></a>
The Presiding Officer stated his biographical materials and responses to questions were ( <a href="#"><u>REs 18 and 33</u></a> ). The Government did not have any voir dire of the Presiding	

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<b>Officer (R. 144).</b>	<b><a href="#"><u>143-144</u></a></b>
<b>Major Bradley stated there was an obvious conflict (R. 144), and based on her letter from a Pennsylvania ethics expert, and Appointing Authority Regulation 3, paragraph 3(C), there must be coordination between The Air Force Judge Advocate General and the Legal Advisor of the Appointing Authority.</b>	<b><a href="#"><u>144-145</u></a></b>
<b>The Presiding Officer noted there was no motion for relief filed with the Commission, and that the letter from the expert was not from an appropriate Pennsylvania authority. Major Bradley did not avail herself of the avenues the Presiding Officer suggested in correspondence before trial.</b>	<b><a href="#"><u>146-147</u></a></b>
<b>The Presiding Officer directed Major Bradley to represent the Accused.</b>	<b><a href="#"><u>148</u></a></b>
<b>Major Bradley stated she believed the ethics opinion from Pennsylvania was a valid, advisory opinion (R. 149-150). She said she believed it was not possible to get a more formal, binding ethics decision from Pennsylvania.</b>	<b><a href="#"><u>149-154</u></a></b>
<b>The Presiding Officer described in chronological fashion the Defense assignment to the Accused's case and the development of the perceived conflict of interest issue. The Presiding Officer concluded with the statement that Major Bradley was directed to represent the Accused.</b>	<b><a href="#"><u>155-158</u></a></b>
<b>Major Bradley said she perceived a conflict and would not start doing voir dire or looking into discovery.</b>	<b><a href="#"><u>159-160</u></a></b>
<b>Major Bradley said mail by the Accused was being read by Unauthorized persons. This caused the Defense not to be able to submit any additional motions.</b>	<b><a href="#"><u>160, 163</u></a></b>
<b>The Presiding Officer again advised Major Bradley that she had to file a motion and present evidence concerning the</b>	

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<b>the conflict of interest (R. 165). The conflict of interest motion was not raised (R. 166). Emails do not raise issues, POM 4-3 governs how to raise issues (R. 166). The Presiding Officer gave Major Bradley “a direct order . . . which you will disobey at your peril.” (R. 167).</b>	<b><a href="#"><u>165-167</u></a></b>
<b>After a recess, Mr. Stafford-Smith stated that he advised Major Bradley to get a lawyer (R. 168), and he needed a delay to sort out the new conflict of interest issue. He stated that he advised Major Bradley to take the 5<sup>th</sup> and not answer questions (R. 171). He stated he could not advise Major Bradley (R. 171).</b>	<b><a href="#"><u>168-171</u></a></b>
<b>The Accused told the Presiding Officer to address the conflict issue (R. 172). The Presiding Officer directed the Accused not to comment (R. 172-173).</b>	<b><a href="#"><u>172-173</u></a></b>
<b>The Presiding Office reminded Major Bradley of his order, and asked Major Bradley whether she had any voir dire. Major Bradley stated that she was exercising her 5<sup>th</sup> Amendment rights.</b>	<b><a href="#"><u>174-175</u></a></b>
<b>CDC declined to ask the Presiding Officer any voir dire questions (R. 175-176). The Presiding Officer stated that asking voir dire was therefore waived, but that he was willing to answer questions (R. 178). The Presiding Officer said he did not believe it was an appropriate invocation of the 5<sup>th</sup> Amendment (R. 178).</b>	<b><a href="#"><u>175-178</u></a></b>
<b>CDC said he needed additional time on the conflict of interest issue and had an enormous number of voir dire questions to develop.</b>	<b><a href="#"><u>179-180</u></a></b>
<b>The government had no challenge for cause of the Presiding Officer.</b>	<b><a href="#"><u>181</u></a></b>
<b>The Presiding Officer asked Major Bradley whether she had a</b>	

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challenge for cause, but she invoked her 5 <sup>th</sup> Amendment rights.	<a href="#"><u>182</u></a>
The Presiding Officer stated that he was qualified to sit as Presiding Officer. The Accused stated that he disagreed. The Presiding Officer told the Accused to be silent.	<a href="#"><u>182</u></a>
The Presiding Officer asked Major Bradley whether she and the Accused were served with the charges.	<a href="#"><u>183</u></a>
The Presiding Officer explained Major Bradley had a clear duty to obey his orders (R. 184-185). He repeated his order that she answer his question about whether she and her client received a copy of the charge sheet (R. 186).	<a href="#"><u>186</u></a>
CDC stated it was his intention to disqualify the court because the court was giving legal advice to a lawyer facing criminal charges (R. 186). Major Bradley needs independent advice. CDC said he could not give Major Bradley advice (R. 187). The Presiding Officer asked whether Major Bradley was refusing to answer his question, and the CDC answered that he advised her to take the 5 <sup>th</sup> Amendment (R. 187). Major Bradley said that she was not refusing to obey an order, and she was worried about ineffective assistance of counsel (R. 188).	<a href="#"><u>186-188</u></a>
The Accused said the charge sheet was in English, and the Presiding Officer asked the Accused to remain silent.	<a href="#"><u>189</u></a>
Major Bradley said she is not lead counsel.	<a href="#"><u>191</u></a>
The Prosecutor read the Charges.	<a href="#"><u>192-203</u></a>
The Presiding Officer asked the defense whether there was any objection to the list of Review Exhibits in the Filings Inventory, and Presiding Officer Memorandum ( <a href="#"><u>REs 36 &amp; 42</u></a> ). The CDC stated that the Accused was without counsel (R. 204). The Presiding Officer stated that failure to object resulted in waiver (R. 206). The CDC stated he	

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wanted to revisit the issue in a few months (R. 207). The Presiding Officer stated the Defense had no objections.	<a href="#"><u>192-203</u></a>
The CDC challenged the Presiding Officer for cause, indicating the Presiding Officer has conversations about torture in North Carolina, because of an article he wrote criticizing military Commissions, and the thousands of questions he wanted to ask the Presiding Officer.	<a href="#"><u>208</u></a>
The Presiding Officer authorized the CDC to reserve motions.	<a href="#"><u>209</u></a>
The Presiding Officer asked for pleas, and there being no response, the Presiding Officer entered a plea of Not Guilty.	<a href="#"><u>210-211</u></a>
The CDC said the conflict pertained to the structure of the Office of Military Commissions – Defense taints all of the Accused’s rights. All defense counsel, military and civilian, have a conflict.	<a href="#"><u>212-213</u></a>
The Presiding Officer directed separate briefs from each Defense Counsel, because they have separate interests on the conflict issue. The brief must address what the Presiding Officer can do to eliminate the conflict, and whether Defense Counsel can stay on the case if the Presiding Officer is unable to resolve the conflict. Major Bradley is also required to address the issue of whether she has a conflict of interest caused by her personal 5 <sup>th</sup> Amendment concerns (R. 221).	<a href="#"><u>214-223</u></a>
The Defense had some questions about release of information from discovery to the Accused, and the Presiding Officer told the Defense to file a motion.	<a href="#"><u>226-228</u></a>
The Presiding Officer briefly discussed Protective Orders with the parties ( <a href="#"><u>REs 21-23</u></a> ). The release authority for Review Exhibits to the public is via the DoD Public Affairs Military Commission web site.	<a href="#"><u>228-233</u></a>

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<b>The Presiding Officer told the Accused that his Defense Counsel will be present at hearings unless excused by the Presiding Officer. The Presiding Officer, however, will first obtain a waiver from the Accused before excusing Defense Counsel. Only counsel that represent the Accused may file matters with the Commission. Advisory counsel can assist the Defense and Accused, but are not permitted to represent the Accused. The CDC said he would file a motion concerning the role of advisory counsel.</b>	<b><a href="#"><u>234-241</u></a></b>
<b>The Accused asked whether he could see the Presiding Officer's written answers to the voir dire posed by the CDC. The Presiding Officer responded that the CDC should file a motion.</b>	<b><a href="#"><u>240-241</u></a></b>
<b>The Presiding Officer said the Defense is free to file a motion asking that the Accused be permitted to represent himself. The motion can address the roles of counsel for representation versus the role of the Accused acting on his own behalf.</b>	<b><a href="#"><u>244-245</u></a></b>
<b>Review Exhibits 44 and 45 were provided to the Defense.</b>	<b><a href="#"><u>245</u></a></b>
<b>The Presiding Officer stated that all motions are due on May 4, the Prosecution's response is due on May 11, and Defense replies are due on May 17. The motions will be litigated the week of June 5.</b>	<b><a href="#"><u>248-254</u></a></b>
<b>The hearing recessed on April 6, 2006</b>	<b><a href="#"><u>254</u></a></b>
<b>Authentication page for pages 1-255 of this hearing</b>	<b><a href="#"><u>255</u></a></b>

1 The Commissions Hearing was called to order at 0930,  
2 6 April 2006.  
3 [Throughout this transcript, Lieutenant [REDACTED]  
4 Jr., United States Navy Reserves, will be referred to as  
5 the Prosecutor or Pros. Captain [REDACTED] United  
6 States Air Force, will be referred to as the Assistant  
7 Prosecutor or APROS. Major Yvonne R. Bradley, United  
8 States Air Force Reserves, will be referred to as the  
9 Detailed Defense Counsel or DC. Mr. Clive A. Stafford  
10 Smith will be referred to as CDC. Professor Joseph  
11 Marguiles will be referred to as CDC2. The Accused's last  
12 name, as indicated on the Charge Sheet is "Muhammad." The  
13 Defense prefers to spell and pronounce his last name, as  
14 "Mohamed." Throughout this transcript, the Accused's last  
15 name will be spelled "Muhammad" for consistency.]

16

17 **Presiding Officer:** This military Commission is called to  
18 order in the case of The United States versus  
19 Binyam Ahmed Muhammad.

20

21 **PROS:** This military Commission is appointed by  
22 Appointing Order Number 05-0005, dated  
23 12 December 2005; as amended by Appointing Order

1           Number 06-0003, dated 1 February '06, and  
2           Appointing Order Number 06-0010, dated  
3           27 March 2006; copies of which have been  
4           furnished to the presiding officer, counsel, and  
5           the accused. The original Appointing Order  
6           05-0005 has been marked as Review Exhibit 5.  
7           The other two amended appointing orders will be  
8           marked as the next review exhibits in order, 44  
9           and 45.

10  
11 **Presiding Officer:** Do you have copies of those here now?

12  
13 **PROS:** I do, sir.

14  
15 **Presiding Officer:** Bailiff, if you could, please get those  
16           from the prosecutor; hand them to the court  
17           reporter, who will have them marked at this time.

18  
19 **BAILIFF:** Yes, sir.

20  
21 [The bailiff did as directed.]

22  
23 **PROS:** May I continue, sir?



1

2 **Presiding Officer:** Wait.

3

4 **PROS:** Yes, sir.

5 [Long pause.]

6

7 **PROS:** The Presidential determination that the----

8

9 **Presiding Officer:** Wait, wait, wait, wait.

10

11 [The reporter handed REs 44 and 45 to the presiding

12 officer.]

13

14 **Presiding Officer:** Generally, for counsel on both sides,

15 like to have things marked when we talk about

16 them as opposed as having it done later so we

17 don't lose track of something. For that reason,

18 it's all the more important that we always get

19 documents filed ahead of time as much as

20 possible.

21

22 **PROS:** Yes, sir.

23

1 **Presiding Officer:** Okay. The modification dated  
2 1 February 2006 is Review Exhibit 44; the  
3 modification dated 27 March 2006 is Review  
4 Exhibit 45.

5 **DC:** Before you proceed, Mr. Muhammad has asked to  
6 review these documents.  
7

8 **Presiding Officer:** He cannot at this time. Please sit  
9 down.  
10

11 [The defense counsel did as directed.]  
12

13 **Presiding Officer:** Proceed--have copies of those been  
14 presented to the defense?

15 **PROS:** I believe they were made--the defense was made  
16 aware of them. I haven't--I haven't given copies  
17 of them personally, but these were part of the  
18 appointing authority's record that they had sent  
19 out; I believe that Mr. Hodges had sent them out  
20 at some point.  
21

22 **Presiding Officer:** Major Bradley, do you have copies of  
23 those modifications?

1

2 **DC:** I--that's why Mr. Muhammad has requested to look  
3 at them, to make sure we have them, these  
4 modifications.

5 **Presiding Officer:** Major Bradley, do you have copies of  
6 those modifications?

7

8 **DC:** Not that I know of, no.

9

10 **Presiding Officer:** Okay. I am going to ask that we get  
11 some copies of those made at the next break and  
12 then we'll provide those to the defense if you  
13 don't have them already.

14

15 **PROS:** Aye, sir.

16

17 **Presiding Officer:** Okay. Proceed.

18

19 **PROS:** The Presidential determination that the accused  
20 may be subject to trial by military Commission  
21 has been marked as Review Exhibit 1 and has  
22 previously been shown to the defense.

23

1 The charges have been marked as Review Exhibit 2  
2 and have been properly approved by this  
3 appointing authority and referred to this  
4 Commission for trial. The approval of the  
5 charges and their referral to this Commission  
6 have been marked as Review Exhibits 3 and 4,  
7 respectively. The prosecution caused a copy of  
8 the charge in English, which is the accused's  
9 native language, to be served on the accused on  
10 30 November 2005.

11  
12 The prosecution is ready to proceed in the  
13 Commission trial of United States versus Bynyam  
14 Muhammad.

15  
16 The accused and the following personnel detailed  
17 to this Commission are present:

18 **Colonel Ralph Kohlmann, Presiding Officer;**

19 **Lieutenant [REDACTED] Prosecutor;**

20 **Captain [REDACTED] Assistant Prosecutor;**

21 **Major Yvonne Bradley, Detailed Defense Counsel.**

1 Mr. Clive Stafford Smith and Mr. Joseph Marguiles  
2 have been detailed as civilian defense counsel;  
3 however, they are not at table but are present in  
4 the courtroom. All other members are absent.

5  
6 A court reporter has been detailed reporter for  
7 this Commission and has been previously sworn.  
8 Security personnel have been detailed for this  
9 Commission and have been previously sworn.

10  
11 **Presiding Officer:** I have been designated as the presiding  
12 officer in this military Commission by the  
13 appointing authority and I have been previously  
14 sworn.

15  
16 Lieutenant [REDACTED] please state by whom you have  
17 been detailed and your qualifications.

18  
19 **PROS:** Yes, sir. All members of the prosecution have  
20 been detailed to this military Commission by the  
21 Chief Prosecutor. All members of the prosecution  
22 are qualified under Military Commission Order  
23 Number 1, Paragraph 4(b), and we have previously

1           been sworn. No member of the prosecution has  
2           acted in any manner which might tend to  
3           disqualify us in these proceeding. The detailing  
4           document has been marked as Review Exhibit 6.

5

6           The prosecution----

7

8   **Presiding Officer:** Hold on a second----

9

10   [The bailiff walked towards the defense table with  
11   documents.]

12

13   **PROS:**       ----also as sitting at the pros----

14

15   **Presiding Officer:** One second.

16

17           What are you doing?

18

19   **Bailiff:** I--these are the--they gave it to me [handing  
20           documents to the presiding officer].

21

22   **Presiding Officer:** Go ahead.

23

1   **PROS:**       The prosecution, also as sitting at the  
2                   prosecution table and assisting, who will assist  
3                   the prosecution but will not be representing the  
4                   government, that is Gunnery Sergeant [REDACTED]

5  
6   **Presiding Officer:**   Thank you.

7  
8   **PROS:**       Yes, sir.

9  
10   **Presiding Officer:**   Major Bradley, please state by whom  
11                   you've been detailed and your qualifications.

12  
13   **DC:**         I've been detailed to this military Commission by  
14                   the Chief Defense Counsel.   Review Exhibit 7  
15                   details my--is the letter that details me to--to  
16                   this case.   Well, as far as being qualified, at  
17                   this point I cannot say I am qualified to  
18                   represent Mr. Muhammad given that there's a  
19                   pending conflict of interest issue on this  
20                   matter.   And Mr. Muhammad may also want to  
21                   address the court as far as qualification of  
22                   counsel.

23

1 **Presiding Officer:** Okay. Have you been previously sworn  
2 with regard to duties as detailed defense counsel  
3 in this case?  
4  
5 **DC:** Yes, I have.  
6 **Presiding Officer:** Thank you. And, Major Bradley,  
7 Lieutenant [REDACTED] noted that Mr. Stafford Smith  
8 and Professor--is it Marguiles?  
9  
10 **DC:** Marguiles.  
11  
12 **Presiding Officer:** Marguiles.  
13  
14 **DC:** Yes.  
15  
16 **Presiding Officer:** Are present in the court but not at  
17 counsel table. Is that correct?  
18  
19 **DC:** I think it speaks for itself, I mean, who is at  
20 the table, who is not. But, for the record, they  
21 are not at the table. I would agree with that  
22 and Mr. Muhammad may want to make comments about  
23 why counsel is not at the table.



1   **DC:**           I think it speaks for itself, I mean, who is at  
2                   the table, who is not. But, for the record, they  
3                   are not at the table. I would agree with that  
4                   and Mr. Muhammad may want to make comments about  
5                   why counsel is not at the table.

6

7   **Presiding Officer:** Okay. So you agree with the  
8                   representation that they are in the courtroom  
9                   here today?

10

11   **DC:**           I do agree.

12

13   **Presiding Officer:** Okay. And obviously, then, they've  
14                   had--have you noticed--it is self evident they  
15                   had notice of the time and hearing and are able  
16                   to be here.

17

18   **DC:**           They are here.

19

20   **Presiding Officer:** I mean, at counsel table here where  
21                   they are supposed to be.

22

1   **DC:**           Well, again, Mr. Muhammad may want to address the  
2                   issue on that. I can't make any other than,  
3                   obviously, it is self evident that the only  
4                   counsel at defense table is myself.

5

6   **Presiding Officer:** As far as you know----

7

8   **DC:**           And the Accused.

9

10   **Presiding Officer:** --are they physically able to walk the  
11                   last five steps?

12

13   **DC:**           I, again, am--[conferring with the Accused]. If  
14                   you want the answer to that, then Mr. Muhammad is  
15                   the only one who can address that issue and  
16                   respond to that question.

17

18   **Presiding Officer:** Major Bradley, are you aware of any  
19                   physical or medical problem that Mr. Stafford  
20                   Smith or Professor Marguiles have that is  
21                   preventing them from sitting at the counsel  
22                   table?

23

1   **DC:**           Again, I'm--I'm saying----

2

3   **Presiding Officer:** No, listen to my question. Are----

4

5   **DC:**           I understand your----

6

7   **Presiding Officer:** Listen to my question, Counsel.

8

9   **DC:**           I understand your question, but my response is

10                   going to be the same.

11

12   **Presiding Officer:** Are you aware, are you, Major Bradley,

13                   aware personally of any physical or medical

14                   problem that they have that's preventing them

15                   from attending this hearing?

16

17   **DC:**           They are in the courtroom.

18

19   **Presiding Officer:** From sitting at the counsel table?

20

21   **DC:**           I cannot answer that question.

22

1 **Presiding Officer:** All right. Commission translators  
2 within the meaning of POM 11 have been detailed  
3 for the Commission and have been previously  
4 sworn. The CV of each Commission translator has  
5 been marked as Appellate Exhibit 30--marked in  
6 Appellate Exhibit 38.

7  
8 Before continuing with other preliminary matters,  
9 it is necessary for me to inquire into the  
10 Accused's need for an interpreter, translator.

11  
12 Mr. Muhammad, are you able to understand and  
13 speak English?

14  
15 **ACC:** First of all, I am preventing----

16  
17 **Presiding Officer:** Sir, could you speak up just a little  
18 bit?

19  
20 **ACC:** You can't hear me?

21  
22 **Presiding Officer:** I can hear you now. Thank you.

23

1   **ACC:**           I am the one who's preventing the two lawyers  
2                   from present--from representing me in this court,  
3                   so that question should come back to me, it  
4                   shouldn't go to her, and I have my reasons.  
5  
6   **Presiding Officer:** I didn't get the last part.  
7  
8   **ACC:**           I have my reasons.  
9  
10   **Presiding Officer:** Right. Well----  
11  
12   **ACC:**           And my reasons----  
13  
14   **Presiding Officer:** ----right now, do you--are you able to  
15                   understand and speak English? It appears that  
16                   you are, but I need to ask you that.  
17  
18   **ACC:**           Well, I'm going to answer that question if you  
19                   just let me for a few seconds. You say my name  
20                   is Binyam Ahmed Muhammad--Muhammad.  
21  
22   **Presiding Officer:** Mahammad?  
23

1   **ACC:**           Could I--I mean, I read the charge sheet just the  
2                   other day. I am not too sure, but----  
3  
4   **Presiding Officer:** Okay. I----  
5  
6   **ACC:**           ----could I have that name----  
7  
8   **Presiding Officer:** ----I apologize if I mispronounced your  
9                   name. Why don't you say it once more for me and  
10                  I'll do my best?  
11  
12   **ACC:**          No, this is not mispronouncing. This is 4 years  
13                   of interrogations, highly intensified, or as they  
14                   call it--he knows what it's called [pointing at  
15                   the prosecution table]--torture, and they still  
16                   don't get the right name. That means you've got  
17                   the wrong person; a mistake, man. The man you're  
18                   looking for is not here. I am not Binyam Ahmed  
19                   Muhammad; that's not me. So I would like it to  
20                   ask him has he got the right person--has he got  
21                   the right person at the table. Because if you  
22                   are in Britain and you get arrested on the  
23                   streets and you don't have a name check, if it

1           give the wrong name, you get sent to jail, right?

2           So now we have a problem. I'm Accused but I have

3           evidence that's not me.

4

5   **Presiding Officer:** Okay. I'm going to----

6

7   **ACC:**       Is this true or not?

8

9   **Presiding Officer:** I'm going to refer to you as Mr.

10           Muhammad. My question----

11

12   **ACC:**       No, but the charge sheet says----

13

14   **Presiding Officer:** Sir, for you--sir, my question for you

15           right now is, do you understand and speak

16           English, and it appears that the answer to that

17           would be yes. Is that correct?

18

19   **ACC:**       That's your presumption?

20

21   **Presiding Officer:** I'm asking you.

22

1   **ACC:**       No, because the presumption that I am Mr.  
2               Muhammad is what put me here. I mean, there are-  
3               -if you go to the rules, if you are in America  
4               and you get arrested, if you are an American and  
5               you get arrested, you have an ID card and you  
6               have the name. If you go in the directory, phone  
7               directory, you have to look for a Muhammad and  
8               you look for MA and the name you have is MU,  
9               that's not the same person. So how they contact  
10              the right person?

11

12   **Presiding Officer:** Okay. Major Bradley, does your client  
13              speak some other language other than English?

14

15   **DC:**       At this point, Mr. Muhammad speaks for himself.  
16              I have a conflict issue that has prevented me --  
17              at this point, to not qualify as his counsel.

18

19   **Presiding Officer:** Okay.

20

21   **DC:**       And, um, he--

22

23   **ACC:**       I would answer that question----



1

2 **Presiding Officer:** Sir----

3

4 **ACC:** ----for you.

5

6 **Presiding Officer:** ----I appreciate your answer. I've  
7 heard what you had to say.

8

9 Major Bradley, as I expect you're aware, per  
10 Commission law, the Defense is entitled to a  
11 defense translator. To my knowledge, you, as his  
12 Detailed Defense Counsel, nor anyone from the  
13 Defense has coordinated with Office of Military  
14 Commission personnel for provision of the defense  
15 translator. Is that correct?

16

17 **DC:** That is incorrect.

18

19 **Presiding Officer:** Okay, have you----

20

21 **DC:** And Mr. Muhammad can explain that also.

22

23 **Presiding Officer:** No, right now----

1

2 **DC:** Well, that's incorrect.

3

4 **Presiding Officer:** ----I am speaking to you. Okay. Then,

5 why don't you tell me what you've done?

6

7 **DC:** Because Mr. Muhammad has requested that he

8 speaks; and that, one, I am not qualified to

9 speak for him, and he has directed that he wants

10 to answer these questions in regards to the

11 translator and other questions before this

12 Commission.

13

14 **ACC:** If you don't like me to speak, I just give you

15 the papers. I'm not going to speak, there's no

16 problem. I know the problem here is you don't

17 want us to speak.

18

19 **Presiding Officer:** Right now----

20

21 **ACC:** I'll give you the papers.

22

1 **Presiding Officer:** Right now, I don't want you to speak  
2 and I do not want your papers right now. I  
3 appreciate your offer. Thank you.

4  
5 **ACC:** Okay. Reasonable.

6  
7 **Presiding Officer:** All right. Mr. Muhammad, pursuant to  
8 Military Commission Order Number 1, you are  
9 represented by Major Bradley, your Detailed  
10 Defense Counsel. You may also request a  
11 different military--request that a different  
12 military lawyer represent you. If the person  
13 that you request is reasonably available, he or  
14 she will be appointed to represent you as your  
15 Detailed Defense Counsel. If you are represented  
16 by Detailed Defense Counsel of your own  
17 selection, you would normally lose the services  
18 of your current Detailed Defense Counsel. You  
19 may, however, request that your current Detailed  
20 Defense Counsel, that is, Major Bradley--excuse  
21 me--remain on your case and the Chief Defense  
22 Counsel in his sole discretion may either grant  
23 or deny that request. Do you understand that?

1

2   **ACC:**           Am I allowed to answer this question now?

3

4   **Presiding Officer:** Yes, I am asking you if you understand  
5                   what I just told you.

6

7   **ACC:**           So I hope you don't interrupt me. You addressed  
8                   me as Mr. Muhammad. I keep referring to this  
9                   because this is a big issue. You have the wrong  
10                  person on the seat. I mean, I don't understand  
11                  what kind of system, after 4 years of torture and  
12                  renditions, still get the wrong person to be on  
13                  the stand. I am not the person you're talking  
14                  to. I am not Mr. Muhammad, and if you are going  
15                  by your books, I mean, how can you charge me with  
16                  something and I am not the wrong person. You got  
17                  the wrong--the wrong man here. I think you have  
18                  to go back and find out who this person you're  
19                  talking about is. On top of that, it says,  
20                  "Native language, English." I'm not American and  
21                  I'm not British and I'm not Australian. How come  
22                  my native language English? That's not my words.

23

1   **Presiding Officer:**   Do you understand--I thought you

2                               were----

3

4   **ACC:**               That's his words. [The Accused pointed towards

5                               the Prosecution table.]

6

7   **Presiding Officer:**   ----done.

8

9   **ACC:**               That's not my words.   Do you understand what I'm

10                           talking about?   I think you're a reasonable

11                           person, that's why you're sitting over there.

12                           And to have in court person whom the cops cannot

13                           arrest and put under interrogation for 4 years

14                           and then find out he's the wrong man, I mean,

15                           what kind of worthiness do these people have,

16                           man?   Ask yourself, what kind of worthiness do

17                           they have when bragging around Dracula and

18                           whatever he's talking about and this island is

19                           getting them a lot of information, gold mine, and

20                           out of the ten people that you have on these

21                           trials one of the person is the wrong man.   I'm

22                           innocent; I'm not--I'm not--I'm not supposed to

23                           be here.   Mr. Binyam Ahmed Muhammad, as you call

1           him, is not here, is not present, so how can we  
2           go on? Either we have to go back and find out  
3           where this person that he's [pointing to the  
4           prosecution table] accusing is or that means I  
5           changed my name to be the man--the name they are  
6           giving me. I don't know if that--I don't know if  
7           Congress gave you the right to change names, I  
8           don't know sure. I mean, they give you the right  
9           to change laws and play around with them but I  
10          don't think about names. And I stress that I am  
11          the wrong person here and until we get  
12          clarification of where this man that you're  
13          looking for is we can't go anywhere, we're stuck.  
14          And this is simple issues, small issue, but this  
15          is--it is an issue. I can't call you Ralph  
16          Kahlmann, can I, and arrest you and put you in  
17          jail because that's not you. That's why we have  
18          phone directory with names with right spellings,  
19          right, to find that this person. And this  
20          Muhammad happens to be the surname, not even  
21          first name. And the surname is the idea of a  
22          person. I mean, how can you get this wrong, man?  
23          Four years of--what do you call it--enhanced

1            technique of torture, and we have the wrong  
2            person in court. I mean, that bothers me; I  
3            don't know how it doesn't bother you. Of course,  
4            you're meant to be doing right and wrong, you are  
5            the just person, right? I mean, they didn't put  
6            you in the seat. So as I'm concerned, they told  
7            me you volunteered to be on that seat. For you  
8            to volunteer, that means you must have seen some  
9            sense that it has to be justice in this court, as  
10          they call it, rigged. So you want to enlighten  
11          America as you are convicting people because they  
12          are terrorist, but then when you have the wrong  
13          person in court, what does that say? We have a  
14          problem here. You can overlook it, I don't--I  
15          mean, you're the judge, but we have a problem.

16

17 **Presiding Officer:** I don't want to interrupt you, so----

18

19 **ACC:**            No, no. I'm--I'm finished.

20

21 **Presiding Officer:** ----are you done now?

22

23 **ACC:**            I'm finished. Go on, please.

1

2 **Presiding Officer:** Okay. I hear what you're saying and I

3 understand what you're saying, okay? A couple of

4 things you need to know, which I would hope your

5 attorneys have told you, is that as you come here

6 and sit here today you are presumed to be

7 innocent under Commission law. And--let me talk

8 for a minute.

9

10 **ACC:** I'm not--I'm not going to----

11

12 **Presiding Officer:** Don't interrupt me----

13

14 **ACC:** No, no, no, I'm not going to----

15

16 **Presiding Officer:** ----and then I'll--and I'll----

17

18 **ACC:** ----I'm just--I'm just--no, no, no----

19

20 **Presiding Officer:** ----and then I'll--and then you can go

21 back. All right, sir?

22

23 **ACC:** I'm not--when you see me----



1

2 **Presiding Officer:** No, no, no. Wait, wait, wait.

3

4 **ACC:** ----that's a surprise face.

5

6 **Presiding Officer:** I waited for you, all right, okay? And

7 after I'm done, you can talk to me again. Okay?

8

9 **ACC:** No problem.

10

11 **Presiding Officer:** Okay. But just let me speak and I

12 pause sometimes, but that doesn't always mean I

13 am done either. Okay?

14

15 **ACC:** Can I just ask one question before we go on?

16

17 **Presiding Officer:** Yes.

18

19 **ACC:** Are we all human in this place? Are we--are we--

20 the way we are before I entered the room. Before

21 I entered the room I wasn't human, and when I

22 come here I'm supposed to be human. So am I to

23 presume everyone is human here or do we have an

1 alien? That means--I don't--maybe you don't  
2 understand what I'm saying.

3

4 **Presiding Officer:** Do you know what the word "rhetorical"  
5 means, a rhetorical question?

6

7 **ACC:** No.

8

9 **Presiding Officer:** Okay. Rhetorical question is one that  
10 you ask because you want to ask a question but  
11 doesn't necessarily--you don't expect an answer.  
12 I don't know whether you expect the answers to  
13 those from me or not. I'm not going to answer  
14 questions like that from you, so when you ask  
15 questions like that--I understand the point that  
16 you are seeking to make, but I'm not here to  
17 answer every question that everybody here has. I  
18 have--I have a role to conduct a full and fair  
19 trial on the allegations that have been made  
20 against you. And this is my turn now, so just  
21 sit back and just relax for a second.

22

1           Hopefully, your lawyers have explained to you  
2           that as you sit here today you are presumed to be  
3           innocent, okay, and whether that's because you're  
4           not the person that they say you are, or you  
5           didn't do the things that they say you did, or  
6           you did the things that they say you did but they  
7           don't understand the circumstances under which  
8           they took place, or any number of reasons why you  
9           may ultimately be found not guilty of these  
10          offenses. And, in some cases, even if you did  
11          it, sometimes the proof isn't good enough to get  
12          beyond the standard of proof beyond a reasonable  
13          doubt, okay. It's not my job to explain these  
14          things to you. It's your lawyers' jobs to--to  
15          work with that and I hope they've done that. But  
16          I'm addressing the initial points you've made.  
17          I'm not look--you say, if I have to go back and  
18          look for the right guy, that's not my function  
19          either, okay. It's not my job to ensure that you  
20          are convicted or acquitted. Do you understand  
21          the word "acquitted"? That means, found not  
22          guilty, okay. That's not my job and not my  
23          concern. My job is to ensure a full and fair

1 trial. Now, if you are not the person that they  
2 allege you are, I would expect the evidence is  
3 going to demonstrate that or there won't be  
4 enough evidence to demonstrate that you are, even  
5 if you are, that person. And that would be  
6 something that's accomplished during the course  
7 of the proceedings, but it's not something that  
8 we need to or will be presenting evidence on at  
9 this time. And this process, unhappily perhaps,  
10 is going to take some time. Additionally, I will  
11 not allow us to do things out of order. We have  
12 a lot of things that we have to do before we get  
13 around to the evidence about whether you really  
14 are the person named in the charge or whether you  
15 did the things they said you did, okay.

16  
17 And I'm glad to hear you say you think I am a  
18 reasonable person. I think I'm a reasonable  
19 person too, but the fact remains that we need to  
20 do and we are going to do things in a certain  
21 order, whether you like it or not. I hope you  
22 can understand that, but--but that's just the way  
23 things are going to work. And I hope that, even

1           if you don't express it to me, somewhere you're  
2           understanding that that's the way it has to work.

3  
4           Right now, we are going to move to the next piece  
5           of procedure, moving towards that time when we  
6           can hopefully receive evidence which will get us  
7           to where we need to be.

8  
9           I've explained to you your rights with regard to  
10          Detailed Defense Counsel. Do you wish for me to  
11          repeat that explanation for you at this time?

12

13   **ACC:**       Yes.

14

15   **Presiding Officer:** Pursuant to Military Commission Order  
16          Number 1, you are represented by Major Bradley,  
17          who is sitting next to you as your Detailed  
18          Defense Counsel. You may also request that a  
19          different military lawyer represents you. If the  
20          person you request is reasonably available, he or  
21          she will be appointed to represent you as your  
22          Detailed Defense Counsel. If you are represented  
23          by Detailed Defense Counsel of your own

1           selection, you would normally lose the services  
2           of your current Detailed Defense Counsel, that  
3           is, Major Bradley. You may, however, request  
4           that your current Detailed Defense Counsel remain  
5           on your case and the Chief Defense Counsel, in  
6           his sole discretion, may either grant or deny  
7           that request. Do you understand my explanation  
8           to you about Detailed Defense Counsel?

9

10   [Affirmative response by ACC.]

11

12   **Presiding Officer:** Let the record reflect an affirmative  
13           response.

14

15           If you could just speak up----

16

17   **ACC:**        Yes.

18

19   **Presiding Officer:** ----that would be helpful.

20

21   **ACC:**        Am I supposed to answer this question?

22

1 **Presiding Officer:** No, no, no, no. I heard you say, "Um,  
2                   hmm," which I took to be an affirmative response  
3                   that you understood what I told you.

4  
5 **ACC:**       Yes, I understand what you say.

6  
7 **Presiding Officer:** Okay. Thank you. Detailed Defense  
8                   Counsel are provided to you free of charge. Do  
9                   you understand that?

10  
11 **ACC:**       "Free of charge," meaning?

12  
13 **Presiding Officer:** Means you are required to pay nothing  
14                   for the services of Major Bradley or whoever it  
15                   is that you seek out as a Detailed Defense  
16                   Counsel.

17  
18 **ACC:**       What if I decide my Defense Counsel, which will  
19                   cost nothing, is British lawyer with a British  
20                   citizenship? Then what happens then? And I want  
21                   him to defend me because I don't believe that her  
22                   [pointing to the Defense Counsel] being an  
23                   American and a soldier, sworn enemy of mine, is

1           going to defend me. So then what happens? I  
2           mean----

3

4   **Presiding Officer:** Okay. Let me finish the piece on the  
5           detailed United States military Defense Counsel.  
6           You said you understood your rights with regard  
7           to being represented by her, who has been  
8           assigned to you or if you wanted to select a  
9           different one. Do you understand that, right?

10

11   **ACC:**       Yeah we finished that one, right.

12

13   **Presiding Officer:** And you understand that with regard to  
14           the mil--United States military counsel that are  
15           provided to you, that costs you nothing?

16

17   **ACC:**       I understand now. That means she's free.

18

19   **Presiding Officer:** I'm just trying to get past that point,  
20           okay. Understand that. Now, I am going to talk  
21           to you about civilian lawyers and then I'll get  
22           to your question about military lawyers from  
23           another country.



1  
2 In addition to the Detailed Defense Counsel,  
3 that's Major Bradley, you may be represented by a  
4 qualified civilian lawyer. Pursuant to the rules  
5 that have been established for these proceedings,  
6 a civilian lawyer would represent you at no  
7 expense to the government. To be qualified, he  
8 or she must be a United States citizen, admitted  
9 to practice of law in a state, district,  
10 territory, or possession of the United States or  
11 a federal court; and may not have been sanctioned  
12 or disciplined for any relevant misconduct; be  
13 eligible--they must be eligible for a secret  
14 clearance and agree in writing to comply with the  
15 orders, rules, and regulations of the Military  
16 Commissions. If a civilian lawyer represents  
17 you, your Detailed Defense Counsel will continue  
18 to represent you as well as this Detailed Defense  
19 Counsel--excuse me--will continue to represent  
20 you and the Detailed Defense Counsel will be  
21 permitted to be present during the presentation  
22 of all evidence. Do you understand what I've  
23 told you just now about civilian Defense Counsel?

1

2   **ACC:**           This civilian counsel has to be an American?

3

4   **Presiding Officer:**   It must be a United States----

5

6   **ACC:**           Citizen.

7

8   **Presiding Officer:**   ----citizen.   So you might have

9                   circumstances where someone has dual citizenship,

10                  and I----

11

12   **ACC:**           I understand.

13

14   **Presiding Officer:**   ----cannot say for sure but I would

15                  imagine that they would qualify as well.   I--in

16                  dual citizenship--so you'd have someone from

17                  whatever country you want to name who is also a

18                  United States citizen.

19

20   **ACC:**           But----

21

22   **Presiding Officer:**   I think they fall on that category as

23                  well.

1

2 **ACC:** I mean, let's have this scenario. You are an  
3 American and I am not American. Why do I have to  
4 tell an American to defend me, man? But why  
5 that?

6

7 **Presiding Officer:** That's not the rule. The rule for  
8 civilian Defense Counsel, they must be a United  
9 States citizen.

10

11 **ACC:** Is this the rule on all the courts in the world  
12 or is it just----

13

14 **Presiding Officer:** That's the rule in this court.

15

16 **ACC:** ----here? Well, I'm not--I'm not----

17

18 **Presiding Officer:** And, Mr. Muhammad--and that's what I  
19 would refer to you, and I understand your  
20 continuing objection to my use of that, okay, but  
21 I need to call you something and that's what I'm  
22 going to call you.

23

1   **ACC:**           Well, you can call me Count Dracula like they  
2                   [pointing to the prosecution table] call me.  
3                   I'm--I'm--I'm left content.  
4  
5   **Presiding Officer:** Well, I won't be doing that.  
6  
7   **ACC:**           All right. But he can call me that. I mean, I  
8                   would love him to call me that. I don't want him  
9                   to call me Muhammad because if he can get my name  
10                  wrong and they get the wrong person after 4 years  
11                  of interrogation, I mean, that's slow; that's  
12                  stupid.  
13  
14                  We can go into this question.  
15  
16   **Presiding Officer:** Okay. Frankly, I forgot what your  
17                  question was. Why don't you ask me again? I  
18                  think it was a good one, but I just can't  
19                  remember it.  
20  
21   **ACC:**           The question is, I am not an American----  
22  
23   **Presiding Officer:** Got it. I remember it.

1

2   **ACC:**       ----and I have problem with trusting Americans  
3               because I've been in custody of Americans for 4  
4               years, directly and indirectly. I've been  
5               abused. So I have a problem in trusting an  
6               American, whether he be military or civilian.  
7               And that's your rules; they show that there is--  
8               there is problems in this military, this--I am  
9               not going to call it the name, but this room  
10              here. So we have problem. How can I have--how  
11              am I supposed to trust her to defend me and yet  
12              she's under orders to be my enemy. I mean, it  
13              doesn't make sense. And then an American  
14              civilian, you could say, how? But then he's  
15              patriotic, I mean, that's his nation, he has to  
16              defend it. So why don't I have the right to my  
17              own lawyer, from my own nation, where I can have  
18              trust?

19

20   **Presiding Officer:** I understand your explanation. But you  
21               have another problem, and that's that this is the  
22               rule that governs this commission, not made by  
23               me, but the rule under which we will be

1           operating. At some point, if your counsel seeks  
2           to make a motion to complain about that rule and  
3           seek other relief, they can do that, but right  
4           now that's the rule we're using although I  
5           understand your concern with that rule. But  
6           there is nothing I am going to do about it right  
7           now.

8

9   **ACC:**       I mean--let me understand this. You're on that  
10           seat and there is something called POM, which is-  
11           ---

12

13 **Presiding Officer:** Presiding Officer's Memorandum, which  
14           are the rules of court.

15

16 **ACC:**       So that means you kind of make the rules in this  
17           court?

18

19 **Presiding Officer:** The rule that we're talking about right  
20           now, and that's the only rule we're talking about  
21           right now with regard to the qualifications of  
22           counsel, were not established by the Presiding  
23           Officers. And I've--and I'm not going to debate

1           the rule with you because it just is what it is  
2           right now.

3

4   **ACC:**       I am not trying to debate the rule, you know, I'm  
5           trying to say why I say you're reasonable,  
6           because a person who is reasonable would see that  
7           there's problems and he has the power to change  
8           them and then he was to weigh does this change  
9           help his nation or does it destroy his nation,  
10          then he makes that change. No, I'm not here to  
11          argue with you on whether I'm a terrorist or not.  
12          If you were trying to save lives, as I think  
13          that's the issue here, I mean, I think you should  
14          have the right person in court. For 4 years of  
15          interrogation and I'm the wrong person in court,  
16          that's--that's not civilianized, that's a waste  
17          of money, waste of intelligence.

18

19   **Presiding Officer:** With your----

20

21   **ACC:**       And that's propaganda.

22

1 **Presiding Officer:** With your concerns noted, do you  
2 understand the rules with regard to civilian  
3 Defense Counsel?  
4  
5 **ACC:** I understand the rules.  
6  
7 **Presiding Officer:** I know you don't like them, but do you  
8 understand them?  
9  
10 **ACC:** I had hoped that you'd say that maybe you try and  
11 change them because you're being reasonable, but-  
12 ---  
13 **Presiding Officer:** If the defense makes a motion about  
14 that, we'll take it up, but I'm not going to do  
15 it based on a conversation with you right now.  
16  
17 **ACC:** I hoped to be----  
18  
19 **Presiding Officer:** That would be inappropriate.  
20  
21 **ACC:** I'm not trying to be your enemy in court. I hope  
22 you are not trying to see me as your enemy in  
23 court. I'm trying to enlighten you to understand



1           why you have everything wrong and why probably I  
2           have everything right. And then you should  
3           listen to them and see why they have everything  
4           right and I have everything wrong. And if I have  
5           the chance to speak, then I can say it. But  
6           then, if I don't have the chance to speak, then  
7           we have a problem because I don't want her  
8           [pointing to the Defense Counsel] as my lawyer  
9           and the civilian lawyers, they are just my  
10          advisors, they are not lawyers. They are  
11          lawyers, but they are my advisors outside this  
12          courtroom, so they can't talk on my behalf.  
13          Understand? So I'm just trying to help you out.  
14          I am not trying to be whatever you want to think  
15          I am supposed to be.

16  
17 **Presiding Officer:** I understand. Do you understand the  
18           rules with regard to civilian Defense Counsel  
19           that we are operating under at this time?

20  
21 **ACC:** Yes, and I'm happy that you understand, because--  
22

1 **Presiding Officer:** Okay. Now, you raised a question about  
2 the British, and I don't know if you were talking  
3 about British military lawyer or if you just  
4 picked that out of, you know, as a country. A  
5 military lawyer from another country, okay, I  
6 have--I have not considered that and I don't know  
7 how a request for certification by a military  
8 attorney from another country would be received.  
9 If that is your wish--I don't know if you have a  
10 particular person in mind--I would recommend that  
11 you make that request through your Detailed  
12 Defense Counsel and then we'll see how that--see  
13 how that's to proceed.

14

15 **ACC:** Well, we have a problem here because the Detailed  
16 Defense Counsel can't speak on my behalf because  
17 she has a conflict, and I am sure that you have  
18 the papers on the conflict. It's been there for  
19 2 months now. And she can't--she can't speak on  
20 my behalf. She can't even act on my behalf.

21

22 **Presiding Officer:** We're--we're----

23

1   **ACC:**           So how do I get----

2

3   **Presiding Officer:** We're going to get to that. Do you  
4                   understand what I just told you about who needs  
5                   to do that? And I understand you--you think  
6                   right now she's not going to be able to do that,  
7                   but do you understand what I'm telling you right  
8                   now about who is going to have to do that?

9

10   **ACC:**           I understand.

11

12   **Presiding Officer:** Based on where we are right now with  
13                   her being your Detailed Defense Counsel, if she  
14                   ends up not being your Detailed Defense Counsel,  
15                   you know, and that certainly could change, that  
16                   would be another story. Right now, she is your  
17                   Detailed Defense Counsel.

18

19   **ACC:**           As far as right now, she said she cannot----

20

21   **Presiding Officer:** At 1010 on today, she is your Detailed  
22                   Defense Counsel, right?

23

1   **ACC:**           She said she is not able to talk on my behalf and  
2                    she's explained that to me.

3

4   **Presiding Officer:** Yes, she may be mistaken in that  
5                    regard, okay?

6

7   **ACC:**           You have to ask her or not?

8

9   **Presiding Officer:** Yes, we'll get there. All right?

10

11                   So as far as the British military lawyer, or--or  
12                   from whatever country, Major Bradley, I would  
13                   encourage you to explore that if that's in fact  
14                   something he wants to do as opposed to just being  
15                   a hypothetical question.

16

17                   Okay. Do you have any additional questions about  
18                   your rights to counsel, about the rights to  
19                   counsel? Not the--we'll get to the application  
20                   of those rights in a minute. Do you have any  
21                   other questions about the rules as far as the  
22                   rights to counsel at this time?

23

1   **ACC:**           I'm--maybe I'm mistaken about--could you explain  
2                    what the rights are? I mean, maybe I--I don't  
3                    want to look stupid in court.

4  
5   **Presiding Officer:** No, not at all.

6  
7   **ACC:**           What is this rights you're talking about?  
8                    Because I would have been 4 years without rights  
9                    and now all of the sudden I got rights. I am  
10                   surprised.

11  
12   **Presiding Officer:** If at any time during these proceedings  
13                    you are confused, okay, you should ask for recess  
14                    and then you can discuss things with your  
15                    counsel. In this case, I am going to explain  
16                    them to you again because they are actually  
17                    pretty concisely stated here in the trial guide.  
18                    But at any time during the proceedings that you  
19                    need to talk with your counsel about something,  
20                    you need to let me know and then we'll provide an  
21                    opportunity for you at an appropriate time.  
22                    Okay?

23

1 [Affirmative response by ACC.]

2

3 **Presiding Officer:** First, the one was--the right about a  
4 military--detailed military counsel, and I  
5 explained to you the right with regard to the  
6 Detailed Defense Counsel. And do you recall that  
7 explanation?

8

9 **ACC:** Yeah.

10

11 **Presiding Officer:** Okay. Do you want me to read it to you  
12 again?

13

14 **ACC:** I don't want to--to go too deep into this because  
15 my interest--you said I have a right. But, where  
16 did that come from? I have--I have no right.  
17 I've had--I haven't have rights for 4 years. If  
18 I have rights, I don't think I would have been  
19 touring the world. I mean, what's this right?  
20 Could you explain what is--what is the right--  
21 what is rights? I mean, she can't explain it  
22 because I've asked her.

23

1 **Presiding Officer:** I'll restate. I'll restate those to  
2 you. Pursuant to Military Commission Order  
3 Number 1, that's where the right comes from, you  
4 are represented by Major Bradley, your Detailed  
5 Defense Counsel. You may also request that a  
6 different military lawyer represent you. If the  
7 person you request is reasonably available, that  
8 other person will be appointed to represent you  
9 as your Detailed Defense Counsel. If you are  
10 represented by this other Detailed Defense  
11 Counsel of your own selection, you would normally  
12 lose the services of your current Detailed  
13 Defense Counsel, Major Bradley. However, you  
14 could request that Major Bradley continue to  
15 represent you along with the counsel that you  
16 selected. And then, if you did that, the Chief  
17 Defense Counsel would have the discretion of  
18 either grant or deny that request. I advise you  
19 that Detailed Defense Counsel are provided to you  
20 free of charge. I also advised you that, in  
21 addition to a Detailed Defense Counsel, you may  
22 be represented by--you may be represented by  
23 qualified civilian lawyer. A civilian lawyer

1 would represent you at no expense to the  
2 government, and to be qualified he must--he or  
3 she must be a United States citizen; admitted to  
4 practice the practice of law in a state,  
5 district, territory, or possession of the United  
6 States or a federal court; and may not have been  
7 sanctioned or disciplined for any relevant  
8 misconduct. They must be eligible for a secret  
9 clearance and agree, in writing, to comply with  
10 the orders, rules, and regulations of the  
11 Military Commissions. If the civilian lawyer  
12 represents you, your Detailed Defense Counsel  
13 pursuant to Military Commission Order Number 1  
14 will continue to represent you as well, and the  
15 Detailed Defense Counsel will be permitted to be  
16 present during the presentation of all evidence.

17  
18 So I've restated those rights to you and we've  
19 talked about them. Do you understand them?

20  
21 **ACC:** Can I ask who is giving me these rights? I mean,  
22 is it an organization?



1 **Presiding Officer:** It is published by Military Commission  
2 Order Number 1.

3

4 **ACC:** So it's from your government? Your government is  
5 giving me the rights to this or, I mean, where is  
6 it coming from? I haven't had that book, so--

7

8 **Presiding Officer:** Military Commission Order Number 1 is  
9 signed by the Secretary of Defense of the United  
10 States.

11

12 **ACC:** Colin Powell?

13

14 **Presiding Officer:** It's Donald Rumsfeld.

15

16 **ACC:** See, if it was Colin Powell, I would say that's  
17 unreasonable. Rumsfeld, that's reasonable.

18

19 **Presiding Officer:** Okay. Any other questions about your  
20 rights to counsel?

21

22 **ACC:** So far, I've got no rights.

23

1   **Presiding Officer:**   I did not hear you.

2

3   **ACC:**           The rights that you're talking about, I don't see

4                    them as rights.

5

6   **Presiding Officer:**   Okay.   Do you----

7

8   **ACC:**            I see them----

9

10   **Presiding Officer:**   ----have any question about the matters

11                    I've just discussed with you about the counsel?

12

13   **ACC:**            No.

14

15   **Presiding Officer:**   Okay.   Do you desire to be represented

16                    by--well, let me ask you this.   By whom do you

17                    wish to be represented in this matter?

18

19   **ACC:**            Is it my desire or is it something you're going

20                    to force upon me?

21

22   **Presiding Officer:**   Right now, I am asking you who do you

23                    wish to be represented by in this matter?

1

2 **ACC:** In this case here?

3

4 **Presiding Officer:** In this Military Commission case, which  
5 we are starting here today. This is our first  
6 session here.

7

8 **ACC:** See, I don't want to be----

9

10 **Presiding Officer:** And it's going to go on for some time,  
11 I would think.

12

13 **ACC:** I understand. I don't want to go into offensive  
14 like he [pointing to the prosecution table] does  
15 and I've read some of his stories, I don't know  
16 if it's offensive as I read it--well, I would,  
17 but I don't consider this place as a Commission.  
18 So, I mean, I'll call it something else, but not  
19 right now. So I'm referring to this place as  
20 "the room." You can call it whatever you want.  
21 As you said, you have to refer to me a Muhammad  
22 even though that's not my name, so I have to

1           refer to this place as a place even though that's  
2           not the real name of the place.

3  
4           I wish no representation by anyone to defend me  
5           in this case because they have no idea what the  
6           case is. The only person who can defend himself  
7           is the one who is Accused. I am the one who is  
8           Accused. I have the answers here, not her, and  
9           not the other two people over there. And you  
10          will never get the answers from her or from the  
11          other two people even though we take them to  
12          Brooklyn and raise up there then. I have the  
13          answers here, not them. So when you ask me that  
14          I have the right to counsel, I wish no right to  
15          counsel. That right came from your government  
16          and your government has appointed me as an enemy.  
17          I don't take the lawyer from my enemy to defend  
18          me. Take it from our perspective. She comes in  
19          here, she defends me, I get acquitted, she  
20          becomes the enemy of America. I come in here, I  
21          got found guilty, she becomes the hero of  
22          America. That's the big issue here. It is my  
23          right, as you say. You asked me, "Do you wish to

1           be defended by counsel?" It's my wish; I don't  
2           want it. If you are going to oppose it, you're  
3           going to subject me to having a lawyer here,  
4           that's really bad. Even though it's the rule,  
5           it's really bad because that's not what a lawyer  
6           is. A lawyer doesn't dictate what happens in  
7           this room I dictate. Like you dictate what  
8           happens in your courtroom, I dictate what happens  
9           in my case. When you subject her to do what is  
10          not right, that's immoral.

11

12 **Presiding Officer:** Okay. So--so when my question is, by  
13           whom do you wish to be represented----

14

15 **ACC:** I answered that question.

16

17 **Presiding Officer:** ----in this case--you've told me you  
18           don't want to be represented by Major Bradley, is  
19           that right?

20

21 **ACC:** No. I'm going to put it in plain British  
22           English. Maybe American English you don't

1           understand it, but English English says, "I--  
2           wish--no--representation."  
3

4   **Presiding Officer:** Now, in the time leading up to our  
5           hearing today, there have been two lawyers who  
6           have made representations to this commission,  
7           that they--let me finish.  
8

9   **ACC:**       No, no, I'm just surprised.  
10

11   **Presiding Officer:** Okay.  
12

13   **ACC:**       There's no--  
14

15   **Presiding Officer:** Okay, that's fine.  
16

17   **ACC:**       When I talk, then let's talk.  
18

19   **Presiding Officer:** There's two lawyers that have made  
20           representations that they have been--that they  
21           are representing you in this case. They have  
22           indicated that they have been speaking for you.  
23           And they are Mr. Stafford Smith----

1  
2   **ACC:**           Yes.  
3  
4   **Presiding Officer:** And a Professor Marguiles. Did you at  
5                   any time authorize them to make representations  
6                   on your behalf to this Commission?  
7  
8   **ACC:**           These commissions? No.  
9  
10   **Presiding Officer:** Do you wish for them to represent you  
11                   in this matter?  
12  
13   **ACC:**           To advise me?  
14  
15   **Presiding Officer:** To represent you.  
16  
17   **ACC:**           To be in front, here, and talking to you---  
18  
19   **Presiding Officer:** Or make----  
20  
21   **ACC:**           ----on my behalf?  
22

1 **Presiding Officer:** Or make--representation includes any  
2 kind of communication with this Commission.  
3  
4 **ACC:** Any kind of communication with these commissions?  
5  
6 **Presiding Officer:** In court or through documents.  
7  
8 **ACC:** No communications with you or with these  
9 commissions.  
10  
11 **Presiding Officer:** Okay. And you----  
12  
13 **ACC:** They're my advisors.  
14  
15 **Presiding Officer:** ----don't want them speak--and they  
16 don't want you--you don't want them speaking on  
17 your behalf?  
18  
19 **ACC:** No, there is--this is a technical term you're  
20 using now, because we have the habeas lawyers and  
21 we have now the Commission lawyers, right?  
22  
23 **Presiding Officer:** That's the distinction. If----



1

2   **ACC:**       If Clive--if Clive goes outside and starts  
3               speaking on my behalf as a habeas lawyer, even  
4               though is concerning this case, that doesn't make  
5               him my Commission lawyer, does it?  It doesn't.  
6               He's my habeas lawyer.  As far as I'm concerned,  
7               Clive and Joe----

8

9   **Presiding Officer:**  And that is Mr. Stafford Smith?

10

11   **ACC:**       Yes.  They are my----

12

13   **Presiding Officer:**  Then why don't we use that----

14

15   **ACC:**       ----habeas lawyers.

16

17   **Presiding Officer:**  ----because this is a rather formal  
18               proceeding, okay?

19

20   **ACC:**       I understand, but they are my habeas lawyers.  
21               I've never put them in the court.  I never said  
22               they are lawyers here.

23

1 **Presiding Officer:** I understand.

2

3 **ACC:** So I don't know where you're getting this one, I  
4 don't know if he has given the wrong information  
5 about it.

6

7 **Presiding Officer:** No. I've got this from Mr. Stafford  
8 Smith. He has made numerous filings on your  
9 behalf, but I understand now that you said that  
10 was without your authorization, is that correct?

11

12 **ACC:** I have not given them authorization to come into  
13 this room and represent me in this room.

14

15 **Presiding Officer:** Okay.

16

17 **ACC:** We're having a problem with the English term. I  
18 would----

19

20 **Presiding Officer:** Okay. Well, and--and--he's either  
21 representing you before this Commission or he is  
22 not, okay, and that includes any kind of filings  
23 or any kind of communication.

1

2   **ACC:**       Okay.  So that means that we have to, right now,  
3               make it clear that his representation means  
4               filing and all that stuff because we did not  
5               understand.  This is all new to us, you  
6               understand?  There's never been an American  
7               Commission.  I never heard of this kind of--I'm  
8               going to--I want to understand it for me.  For  
9               him to file something on my behalf on this case,  
10              does it make him be my representative in this  
11              case or does it mean he can be my speaker outside  
12              or my advisor.  What does it--what's the----

13

14   **Presiding Officer:**  In order for him to participate in any  
15               fashion in this Commission proceeding, through  
16               filings or appearances in court, he must be  
17               representing you in this matter, which he has  
18               represented to the Commission he was doing.

19

20   **ACC:**       Okay, sir.

21

1   **Presiding Officer:** Now, that was a misunderstanding  
2                   between you and him and we're going to clarify  
3                   that right now.

4  
5   **ACC:**       We have to clarify that one because I want to  
6                   clarify it.

7  
8   **Presiding Officer:** Can you tell me, do you want him as  
9                   your representative in this Commission?

10  
11   **ACC:**       I want him as an advisor outside this room  
12                   because I am new to this; I don't know what the  
13                   heck is going on here and I need to know because  
14                   you are talking law and I am not a lawyer. But  
15                   him to represent me in this room and answer your  
16                   questions, that I don't allow it.

17  
18   **ACC:**       Okay.

19  
20   **DC:**        Your Honor, if I could just comment, because I  
21                   think what he's--what he's saying, and this is  
22                   based in *Faretta versus California*, that he wants  
23                   the right to self-represent himself in this room,

1 but that he wants to keep Mr. Clive Stafford-  
2 Smith as for--and as well as Professor Joseph  
3 Marguiles as advisors. They just cannot speak in  
4 this room, as he calls it. [Conferring with the  
5 Accused.] Mr. Muhammad calls it in this room.  
6 He wants to be the one speaking in this room and  
7 he has a right to self-representation and to  
8 speak in this room, which is one reason why I  
9 have been silent along with the conflict issue  
10 because Mr. Muhammad wants to speak on his own.

11

12 **Presiding Officer:** Okay. As you should be aware, under  
13 Commission law, he does not have the right to  
14 self-representation. If the defense wishes to  
15 make a motion challenging that rule or any other  
16 rule, you're free to do it and we'll take it up,  
17 but we are not going to change the way we're  
18 operating based on some such assertion of a right  
19 which doesn't really exist. And what we are  
20 going to focus on right now is whether or not the  
21 representations of Mr. Stafford-Smith, made  
22 through his notice of appearance filed with this  
23 Commission, and the same with Professor

1           Marguiles, are accurate or if they were the  
2           result of some sort of misunderstanding or if  
3           they are just plain inaccurate.

4  
5   **DC:**       They are not inaccurate; it is not a  
6           misunderstanding. It is the understanding that  
7           they have the right to file on Mr. Muhammad's  
8           behalf and, again, I'll let Mr. Muhammad speak on  
9           that because I don't want to put words in his  
10          mouth. But in this room, Mr. Muhammad wants to  
11          be the captain of the ship. So there have been  
12          no incorrect filings or incorrect  
13          misrepresentation by Defense Counsel, and I want  
14          the record clear on that, that we don't leave  
15          here believing that Mr. Muhammad has not  
16          authorized or has not--that any filings have been  
17          filed in this case, which have been numerous by  
18          the defense, and particularly with the conflict  
19          issue, has inaccurately been filed. So I want  
20          the record very clear on that because----

21  
22   **Presiding Officer:** Well, what the record is----

23

1   **DC:**           I believe that's where I've been hearing that  
2                   you're saying that there's been some  
3                   misrepresentation or perhaps some fraud by  
4                   counsel and I want that very clear, particularly  
5                   because we have ethical issues involved in this  
6                   case, many ethical problems that have arisen and  
7                   they have not been in the side of the defense. I  
8                   want to make that very clear that there had--  
9                   haven't been any inappropriate behavior by the  
10                  defense on this matter.

11

12   **Presiding Officer:** Okay. Now, I am not trying to make the  
13                   case any--what I'm trying to do is clarify  
14                   because the clear statement I have from your  
15                   client is that he at no time authorized Mr.  
16                   Stafford Smith or Professor Marguiles to make any  
17                   representations on his behalf to this Commission.  
18                   Now, if we need to clarify that, we're----

19

20   **DC:**           But that's a mistake----

21

22   **Presiding Officer:** ----going to do that.

23

1   **DC:**           ----that's a misstatement----

2

3   **Presiding Officer:** No, no, no. Stop. Do not interrupt  
4                   me, you understand? Now, if that is somehow a  
5                   misunderstanding, we do need to clarify that and  
6                   what I'll do is offer you an opportunity right  
7                   now if you want to step out, take a recess, and  
8                   talk about that with your client.

9

10   **DC:**           Yes, sir. Let's take a recess and talk about--  
11                   oh, well, sorry. Mr. Muhammad----

12

13   **ACC:**           We don't need to go for recess for this. I can  
14                   do it right now here. You don't need to waste  
15                   another 5 minutes outside.

16

17                   Representation, as I understand it to my  
18                   language, was to represent me in here. To file  
19                   motions, that's something else. I authorize them  
20                   to file motions----

21

22   **Presiding Officer:** Okay.

23



1   **ACC:**       ----but I do not authorize them to stand up here  
2               and speak on my behalf.

3

4   **Presiding Officer:** Okay. I am glad we had this talk,  
5               okay, because you are mistaken about how this is  
6               going to work. They either are going to be  
7               representing you in this matter, in which case  
8               they will be required to be here for all--at  
9               counsel table, for all sessions of the Commission  
10              unless excused by me, and I would not do that  
11              without your consent to that. Well, they are not  
12              going to be--and for the case, they will not be  
13              representing you on some matters from outside the  
14              court and then not being here, okay. Now, with  
15              that clarification of how this is going to work,  
16              would you like some time to talk with your attor-  
17              -your Detailed Defense Counsel about this or  
18              perhaps even Mr. Stafford Smith and Professor  
19              Marguiles, since they happen to be in the area?  
20              Do you want some time to talk about that?

21

22   **ACC:**       [Conferring with his counsel.] All right. We  
23               take a recess, sir.

1

2 **Presiding Officer:** How much time do you think you need?

3

4 **ACC:** I don't know. This is the first time I've been  
5 in this situation.

6

7 **Presiding Officer:** Fifteen minutes sound okay?

8

9 [Affirmative response indicated by ACC.]

10

11 **Presiding Officer:** Okay. Sounds good to me. It is 1030  
12 and we'll seek to go gavel down, I mean, starting  
13 again at 1045.

14

15 The court's in recess.

16

17 *The Commission hearing recessed at 1030, 6 April 2006.*

18

19 *The Commission hearing was called to order at 1046,*  
20 *6 April 2006.*

21

1 **Presiding Officer:** The Commission will come to order. All  
2 parties present when we recessed are again  
3 present.

4  
5 All right. Mr. Muhammad, have you had an  
6 opportunity to talk about these things with your  
7 counsel?

8  
9 **ACC:** Yes, sir, I have had.

10

11 **Presiding Officer:** Okay. And--well, let me just go back  
12 and ask you, then. By whom do you wish to be  
13 represented in this matter?

14

15 **ACC:** And we still have a problem because in the 15-  
16 minute discussion we had I've been told that 90  
17 percent of lawyers, civilian lawyers in America  
18 or anywhere in the world, don't have to be in the  
19 courtroom with their client, their job is  
20 outside. And in your rules, POMs, there's no  
21 rule that says a civilian lawyer has to be inside  
22 the room.

23

1   **Presiding Officer:**   Actually, there is.  
2  
3   **ACC:**           I haven't read it.  
4  
5   **Presiding Officer:**   Well, you're going to have to trust me  
6                   on this one.   Actually, there is, and whether  
7                   someone disagrees with that rule or not is  
8                   another matter.  
9  
10   **ACC:**           How can I trust you and you are trying to wayward  
11                   this--trust is a big thing.   Because you stand up  
12                   there doesn't mean that I trust you.  
13  
14   **Presiding Officer:**   Well----  
15  
16   **ACC:**           Your government called me a terrorist, and yet  
17                   I'm supposed to be innocent.   Where's the trust  
18                   here?   Trust is not something--  
19  
20   **Presiding Officer:**   By whom do you wish to be represented  
21                   in this matter?  
22

1   **ACC:**       Well, she can clarify what the problem is,  
2               because I--I don't speak lawyer language and she  
3               can try and--and afterwards you can ask me  
4               because I've been advised, I've been told that  
5               these laws that say the civilian lawyer doesn't  
6               have to be in court.

7  
8   **Presiding Officer:**   Okay.   Major Bradley?

9  
10   **DC:**       Yes, Your Honor.   In--in the 15-minute discussion  
11               that I had with Mr. Muhammad, I mean, I couldn't  
12               name one case in where an individual cannot have  
13               a legal advisor.   I mean, if this court can name  
14               a case, I'll be more than happy to--to take that  
15               understanding.   Yes, I mean, there are many cases  
16               where the individual goes in the courtroom; the  
17               lawyer is not there with the individual and most  
18               of the work is done outside the courtroom.   So it  
19               seems as what the Commission law is trying to do  
20               is say, "Hey, you got"--an individual has to have  
21               representation in the courtroom but can't have an  
22               advisor, and I don't understand that because I  
23               don't think that is the law.   And if you would

1           like me to brief it, we would brief the issue;  
2           but I don't understand how, if this is where  
3           you're stating that the Commission law is or  
4           you're stating from the bench that he cannot have  
5           legal advisors and speak for himself in court.  
6           It flies contrary to 17 years of practice. And I  
7           tried to explain that to him; of course, he's not  
8           a lawyer, he doesn't have 17 years of experience.  
9           You probably have a lot more. But I would  
10          challenge the court to name one case where an  
11          individual does not have a right to have legal  
12          advisors.

13  
14 **Presiding Officer:** Major Bradley, we are governed here by  
15          Commission law, okay, and----

16  
17 **DC:**       But I--I not--the problem is I don't understand  
18          Commission law. I mean, I don't think anyone  
19          understands Commission law and that's a problem.  
20          I have to go by 17 years of experience of law, of  
21          legal case of precedence. There is nothing of  
22          that here, so when you send me back to advise him  
23          on something, I can only tell him what has

1           existed, not what is being formulated--created.  
2           So, I mean, if we can brief the issue and look at  
3           what law is out there and make some comparison,  
4           I'd be more than happy to do it, but you ask me  
5           to look into everywhere. I think all of us are  
6           venturing to what doesn't really exists other  
7           than what comes out of these MCIs and these POMs  
8           every once in a while.  
9  
10 **Presiding Officer:** You just interrupted me again.  
11  
12 **DC:**        I apologize for that, sir. I just--I'm trying to  
13           be--I apologize.  
14  
15 **Presiding Officer:** And you just interrupted me again. You  
16           need to stop doing that. Do you understand that?  
17  
18 **DC:**        I apologize. I--I----  
19  
20 **Presiding Officer:** I hear you apologizing. Do you  
21           understand--stand up.  
22  
23 [The DC did as directed.]

1

2 **Presiding Officer:** Do you understand that you need to stop  
3 interrupting me?

4

5 **DC:** Yes.

6

7 **Presiding Officer:** We are governed here by Commission law.  
8 Your statement that you don't understand it does  
9 not obviate the fact that it exists and it is the  
10 rules that we are governed by. Per Commission  
11 law, if counsel are representing a client here,  
12 you're going to be here for all the hearings  
13 unless you're removed from the case by a  
14 competent authority. That's very clear. With  
15 regard to civilian Defense Counsel, they are  
16 going to be here for all the hearings unless they  
17 are excused by the Presiding Officer after a  
18 discussion about a waiver of their appearance  
19 with the Accused. That is the rule of the court  
20 and that is rule until, more than less, you all  
21 submit a motion properly, in accordance with POM  
22 4-3, and then you can sign whatever you want.  
23 Until such time there's a ruling that changes the



1 existing Commission law made up by the  
2 Presidential military order and the MCIs, the  
3 MCOs, and the rules of court established by the  
4 POMs, that's where we are. I am not asking now  
5 if you agree with it. Do you understand what I  
6 just told you?

7

8 **DC:** Yes.

9

10 **Presiding Officer:** Do you need to go back and discuss that  
11 further with your client before I ask him whether  
12 he wants anyone other than you representing him  
13 on this case?

14

15 **DC:** No.

16

17 **Presiding Officer:** Did I say something that is amusing  
18 you?

19

20 **DC:** I--no. I mean, I--I--it's----

21

22 **Presiding Officer:** Okay. Then----

23

1   **DC:**           ----my facial expression.

2

3   **Presiding Officer:** ----then, what you need to do--this is

4                   very serious business, Major Bradley, and your

5                   grin is inappropriate. Do you understand me?

6

7   **DC:**           I didn't realize I was grinning, that it was

8                   inappropriate to the court.

9

10   **Presiding Officer:** Okay. You were and it is. Do you

11                   understand?

12

13   **DC:**           No, I don't, because I didn't realize that I was

14                   doing a grin that was----

15

16   **Presiding Officer:** Fair enough.

17

18   **DC:**           ----inappropriate to the court.

19

20   **Presiding Officer:** I am advising you, you need to take

21                   better charge of your facial expressions when

22                   you're dealing with this court. Do you

23                   understand that?

1

2 **DC:** Again, I didn't realize--I'm just--is this  
3 appropriate now [making a facial expression]  
4 because I am not quite sure of what was  
5 appropriate. And I am not trying to be  
6 disrespectful. I am not.

7

8 **Presiding Officer:** Okay. Well, I'm just advising you that  
9 your grin, while I was explaining the rules, was  
10 inappropriate. And if you weren't aware of it,  
11 there it is, and now--now you've been--you've  
12 received my constructive criticism on that point.  
13 I hope you take it to heart. That's all; we can  
14 just leave it at that.

15

16 Now, we'll go back to the question. So it's been  
17 explained to you what the rules are. I've  
18 explained that to your counsel and explained that  
19 whatever was told to you about what happens  
20 somewhere else is not what is governing us here.  
21 Based on that, you should understand--based on  
22 what you've told me about and what you've  
23 demonstrated to me as far as your use of the

1 English language, that if you want anyone other  
2 than your Detailed Defense Counsel representing  
3 you in this matter, you need to tell me that now  
4 and, if you do want them representing you, they  
5 will be here at that table for all sessions of  
6 the court unless excused. They don't have to say  
7 anything while they're sitting there; they don't  
8 have to do anything while they're sitting there,  
9 okay. You will be represented at a minimum in  
10 these proceedings by your Detailed Defense  
11 Counsel because the rules do not provide for you  
12 to represent yourself. And all I'm trying to  
13 establish now, because I'm taking it one step at  
14 a time, right, is whether you want anyone other  
15 than Major Bradley representing you because what  
16 I've heard from you so far is that you don't want  
17 her representing you. Got it. She's going to  
18 represent you anyway, she's the Detailed Defense  
19 Counsel. And unless something else changes, you  
20 know, she's mentioned some ethical concerns or  
21 something else, she's the Detailed Defense  
22 Counsel and she has the responsibility to  
23 represent you. Some other people have said they

1           represent you and you've told me you never  
2           authorized them to do that. Okay, that's fine.

3  
4           Now I want to--I'm just going to ask you again.  
5           Who do you want to represent you in this matter?

6  
7   **ACC:**       I can talk right now?

8  
9   **Presiding Officer:** Yes, I'm finished.

10  
11   **ACC:**       Then, first of all, I'm happy that she stood up  
12           and there and said she's confused, and I can  
13           understand why she's confused about these  
14           commissions because this is not a Commission,  
15           this is a con-mission, is a mission to con the  
16           world, and that's what it is, you understand.  
17           [Waiving paper saying "CONN MISSIONS and showing  
18           it to the parties and persons of the gallery.]  
19           This is a con mission; it's all it is. Now, if  
20           this was a Commission, you should understand how  
21           to deal with the matter, because she's been in  
22           the commissions for I think 17 years. Now, since  
23           this is a con-mission, which is new to her, it

1           doesn't bother me. You can execute me tomorrow,  
2           but don't try and cheat the world of what this  
3           really is.

4  
5           This place has got great implications. You start  
6           playing around with con-missions around the  
7           world, you started here then tomorrow we have  
8           another one in Canada and then the next day have  
9           another in Australia and the next day have it  
10          somewhere, another place, where certain non-  
11          citizens have to oblige by some POMs that you  
12          write in what I call it con-missions. That's  
13          great implications. That's like the person who  
14          built the bomb, the H-bomb. When he built it, he  
15          just built it. He didn't know that it was going  
16          to be used to kill over 300,000 people in  
17          Nagasaki and Hiroshima, right. Now, you're  
18          standing there and you're telling me is moral to  
19          be in a Commission, which she doesn't even  
20          understand what the heck is a Commission because  
21          this doesn't look like a Commission, this looks  
22          like a con-mission here. You have a con-  
23          administration, which is trying to con the world,

1           to get reelected, and the only way they can do  
2           that is to convict 500 people.

3  
4           Your job is not to convict me. Your job is to  
5           find out what's the truth. Is it appropriate to  
6           convict one person for the sake of propaganda?  
7           And yet, this becomes a bad disease, this becomes  
8           like a religion, just sweeping our nation. And  
9           like a religion is just a mission, all the old  
10          buildings in which we practiced religious they  
11          are going to convert it to the new religion. And  
12          if this con-mission is allowed to proceed and to  
13          judge people, then tomorrow you're going to have  
14          courts around the world turning to be con-  
15          missions. This is the real issue. It is not  
16          about one terrorist, it is about what you are  
17          doing to the world. You said--there is a saying  
18          that says preach what's practiced. You're  
19          preaching something and then practice something  
20          else. America doesn't preach democracy and then  
21          creates a con-mission because it just wants  
22          certain non-citizens to be convicted.

1 I didn't ask for a trial. You can kill me  
2 tomorrow; I don't really care. But then I have  
3 an obligation to the world that such crap cannot  
4 be accepted because this, I have the right around  
5 not to say it, but then somebody in Uganda, when  
6 there's a con-mission which is set out to judge  
7 him, he doesn't have the right to say something.  
8 This is about religion. This is coming from  
9 people who are supposed to be looked up. And I  
10 don't think you, as a reasonable person, can sit  
11 up there and tell me we don't have a problem. We  
12 have great problems here. If I told you, you  
13 have a wife but you're stuck because you can't  
14 sleep with your wife for some reason and you're  
15 in heat. So you what, you go to a prostitute?  
16 Is that morally legal? That's no more. Now,  
17 this is what your regime is doing. You still in  
18 heat and he wants to convict people, so he sets  
19 up a con-mission trying to convict people and is  
20 immoral. And a person who is married who goes  
21 and commits adultery with some prostitute,  
22 doesn't normally loses the respect, loses his  
23 wife, his kids, probably his job, and sooner or



1           later he's going to kill himself because he can't  
2           stand it. We can't sit down here and say, you  
3           know what, George Bush is in a ship and he's  
4           captain of the ship and somebody tells him, "You  
5           know what, the ship's sinking, go back to base  
6           and mend it," and he says, "You know what, I'm  
7           captain of this ship, full steam ahead." That  
8           ships sinks, America. And if you are here trying  
9           to sink America, I have a problem with it. But  
10          as a reasonable person as you are, you should sit  
11          down and think what are you really doing. Is it  
12          one big, bad terrorist who we can't even find out  
13          it's him, it's Mohamed or Muhammad, you don't  
14          even have the right information on him after 4  
15          years of torture, or is it trying to win a war  
16          which has been lost a long time ago.

17  
18          If you think your war, you are going to win the  
19          war by convicting 10 people here, and another  
20          500, that is very stupid. I am not saying, you.  
21          I am saying your government.

1 I asked them, "Who is this judge?" Because I  
2 wanted to know who is the judge. I found out  
3 this from this original person. I think you have  
4 an obligation to your country to find out, are we  
5 really doing the right thing. Is this the sort  
6 of thing we want to run the world? Because what  
7 happens in America happens around the world.

8  
9 I give you an example. Iran goes around saying,  
10 "I have to have a nuclear bomb." America says,  
11 "You know what, you can't, because we are  
12 stronger than you are." Iran says, "You had a  
13 bomb. Why can't I have a bomb?"

14  
15 So tomorrow you are going to have Australia  
16 saying, "You know what, you had a Con-mission.  
17 Why can't I have a Con-mission?" When are you  
18 going to stop this? This is not the way to deal  
19 with this issue.

20  
21 That is why I don't want to call this place a  
22 courtroom, because I don't think it is a  
23 courtroom. This is a Con-mission. If you are

1           running around trying to calm the world, at least  
2           you should have got experts, not him, who can get  
3           wrong names. Try and make it professional,  
4           because it is really stupid. This shows. I am  
5           not too sure about--I don't think you want to be  
6           responsible for such a thing, and maybe sometime,  
7           10 or 20 years, you will have Commissions and  
8           this Commission, their names will be Ralph  
9           Kohlmanns and we will not be having prosecutors,  
10          we will be having slayers, that is a vampires  
11          names, and you won't be having attorneys, they  
12          are going to be Bradleys and Fleeners and Swifts  
13          in the street.

14  
15          Have you ever sat down and thought of the big  
16          issue of what we are really doing? What are we  
17          really doing. I don't think your kids are going  
18          to be proud to hear that there is a Ralph  
19          Kohlmann who is on this Commission. As I don't  
20          think the kids of Hitler are happy to for them to  
21          be called, "You know, your father is the one that  
22          started this shit?"

1           People in stone house----

2

3   **Presiding Officer:** I thought you were done there for a  
4           minute.

5

6   **ACC:**       No, no. I am trying to figure out what to say.

7

8   **Presiding Officer:** Okay, but you have to wrap it up  
9           though, okay.

10

11   **ACC:**       Yes, sir.

12

13   **Presiding Officer:** Because I have some things that I need  
14           to say.

15

16   **ACC:**       People in glass houses shouldn't throw stones.  
17           And you, as America, can't be throwing stones and  
18           be expecting that some little child comes and  
19           throws a marble and cracks your window, does that  
20           scream of a big terror and a 9-1-1. That is not  
21           the way it is.

22

1           Now we forget everything until today. We talk  
2           about this place here. This is a bad place. I  
3           mean it. I am sure you wouldn't agree with it  
4           because if you was arrested somewhere in Arabia  
5           and Bin Laden says, you know what, you are my  
6           enemy but I am going to force you to have a  
7           lawyer and I give you some bearded turban person,  
8           I don't think you will agree with that.

9  
10          Forget what rules, regulations, and crap, you  
11          wouldn't deal with that. That is where we are.  
12          This is a bad place. You are in charge of it. I  
13          don't know if you want to be a general. Because  
14          I can tell something, if you want to be a general  
15          you have to go with this, but if you want to stay  
16          as colonel, like you are, you have to make real  
17          big decisions here.

18  
19          I am done. You can stop looking at the watch.

20  
21        [The ACC placed a single sheet of paper that read "CONN  
22        MISSIONS," in the direction of the gallery.]

1 **Presiding Officer:** I am not going to let you put up signs.  
2  
3 **ACC:** It is not in the POMs.  
4  
5 **Presiding Officer:** Do you understand?  
6  
7 **ACC:** I know but it is----  
8  
9 **Presiding Officer:** You need to put that down, or we are  
10 going to have to put it away.  
11  
12 **ACC:** But it is not in the POMs not to put up signs.  
13  
14 **Presiding Officer:** I am telling you that you need to put  
15 it down or it is going to be put away.  
16  
17 **ACC:** So it is a new POM.  
18  
19 **Presiding Officer:** Mr. Muhammad, the POMs are rules of  
20 court, okay. I can establish additional rules of  
21 court for the conduct of these proceedings, okay?  
22

1   **ACC:**           Okay, so we have a new POM. No more signs in the  
2                   court? Because I want to follow the rules. I  
3                   don't want to be here and you think, oh look at  
4                   this idiot. You said, "POMs." I asked about the  
5                   POMs. There is nowhere where it says that I can  
6                   not have a sign in the court. Now if there is,  
7                   and if there is not, just tell me, because I will  
8                   not do it.

9  
10   **Presiding Officer:** I am telling you as the Presiding  
11                   Officer in charge of the proceeding, that we are  
12                   not going to have signs held up.

13  
14   **ACC:**           Okay, sir, that is a new rule.

15  
16   **Presiding Officer:** Okay, and I allowed you hold it around,  
17                   okay. But we are not going to be propping things  
18                   up.

19  
20   **ACC:**           New POM.

21  
22   **Presiding Officer:** Do you understand that?

23

1   **ACC:**           New POM.

2

3   **Presiding Officer:** Your discussion there was unresponsive  
4                   to my question, and I will get back to the  
5                   question in a just a moment. I allowed you to go  
6                   on for some time there on matters that have  
7                   nothing to do with my question, because I  
8                   understand that you may well have been thinking  
9                   about the things that you wanted to say about  
10                  these proceedings.

11

12                  And, I have allowed you, in my view, a lot of  
13                  leave to just talk. And I didn't need to do  
14                  that, but I did that because I understand the  
15                  circumstances, which might want you to do that.

16

17                  There is a limit to how much leave I will provide  
18                  in that regard, and when I do, you are also going  
19                  to have to be guided by appropriate standards of  
20                  civility, which, in my view would not include  
21                  discussions of hypotheticals that include members  
22                  of my family, which would not include comparing  
23                  me to historical figures, and which would not



1 include the use of words like, "crap" or "shit,"  
2 okay? That is impolite conduct.

3

4 **ACC:** That is impolite.

5

6 **Presiding Officer:** And you did all of those things just  
7 now and you need to stop doing that. Okay, I  
8 understand that maybe you didn't understand  
9 standards, which I am going to require, but now I  
10 have explained those things to you and I would  
11 expect that you would not use profane language or  
12 engage in discussions of things involving members  
13 of my family. Otherwise, you are not going to be  
14 allowed the leave that I have been granting you,  
15 okay. I will need to clamp down on that a little  
16 bit.

17

18 **ACC:** Let me have----

19

20 **Presiding Officer:** And I would rather be able to provide  
21 you opportunities to speak from time to time.

22

23 **ACC:** So no more family.

1

2 **Presiding Officer:** You want to write it down, yeah. Don't

3 talk about the Presiding Officer's family.

4

5 **ACC:** No family.

6

7 **Presiding Officer:** Don't use bad language. You can make

8 your point, "I think the rules for the

9 proceedings are absurd." Okay, that works just

10 as well as, "This is crap." Okay?

11

12 **ACC:** So----

13

14 **Presiding Officer:** And you seem like a rather articulate

15 fellow to me and I think you can probably make

16 your points without bad language.

17

18 **ACC:** Actually, Islam teaches us not to use bad

19 language, but----

20

21 **Presiding Officer:** I didn't hear you.

22

1   **ACC:**           Islam teaches us not to use bad language but  
2                   sometimes I can't control, so it just comes out.

3

4   **Presiding Officer:**   Okay, well try.

5

6   **ACC:**           I am trying to restrain myself as you are trying  
7                   to restrain yourself, but I just--I want to  
8                   understand. You say, "impolite," and I think it  
9                   is impolite to have a person tell you that 99  
10                  percent of the people outside have lawyers, yet  
11                  you they don't have them in the room. And you  
12                  say, "You know what, I don't care." I think that  
13                  is impolite. I think you should say, "I think,  
14                  you know what, I have to go and make an  
15                  investigation on this."

16

17   **Presiding Officer:**   I will give you one minute here.

18                  Because you are kind of starting up again, all  
19                  right.

20

21   **ACC:**           I don't need it.

22

1 **Presiding Officer:** All right. So, I hear what you are  
2 saying, but the bottom line is that it is not  
3 responsive to my question. I understand that you  
4 don't like the rules. I have explained to you  
5 what needs to be done to challenge the rules.  
6 That is a motion by counsel to this court, and so  
7 I am back to the question again. Do you want  
8 anyone other than Major Bradley representing you  
9 in this case? Because it is not going to be they  
10 file things when they want to and don't show up  
11 when they don't want to. It is either they are  
12 representing you or they are not.

13

14 **ACC:** They are not----

15

16 **Presiding Officer:** It is really very simple.

17

18 **ACC:** They are not representing me here under my  
19 orders. As far as I was told, I have the right  
20 to give them an instruction, which they have to  
21 follow. Now I instructed them not to be sitting  
22 with me.

23

1 **Presiding Officer:** Okay, you don't have that right. You  
2 have the right, very clearly, to request to be  
3 represented by civilian Defense Counsel, and if  
4 they are qualified in accordance with the rules  
5 for this proceeding, which apparently Mr.  
6 Stafford Smith and Mr. Marguiles are, because  
7 they have been certified by the Chief Defense  
8 Counsel, who is the person that has to do that;  
9 then you can be represented by them.

10

11 And, if you want them to represent you and you  
12 have come to an agreement with you on how that is  
13 going to be done as far as payment or nonpayment  
14 or whatever, they are going to represent you.  
15 But then, it is fully, not you picking when they  
16 are going to be here and not be here. That is  
17 not the way it works.

18

19 **ACC:** Okay I will----

20

21 **Presiding Officer:** And you go ahead and--frankly I don't  
22 really need to hear you complain about the rules  
23 any more because I understand that----

1

2 **ACC:** This is not complaining.

3

4 **Presiding Officer:** ----you don't like the rules.

5

6 **ACC:** This is not complaining. I am not going to  
7 complain.

8

9 **Presiding Officer:** Okay.

10

11 **ACC:** Since I didn't understand the rules and I was  
12 confused. Do I have the right to reserve this  
13 question for next time, because I can't make a  
14 decision on that right now because I am confused?

15

16 **Presiding Officer:** Well, what----

17

18 **ACC:** You are telling me something and they are telling  
19 me something else.

20

21 **Presiding Officer:** Well, you can't really reserve it. You  
22 have to decide right now. If you decide later to  
23 request additional counsel beside Major Bradley

1           we will take it up, but you can't have them come  
2           on and off, and on and off. You are not going to  
3           be able to essentially manipulate the system that  
4           way. If you want them to represent you, and I  
5           will remind you again, that they have made  
6           representations to us that they were representing  
7           you, well then, they are going to be directed to  
8           represent you fully. But if you don't because  
9           you want to use them in some sort of non-  
10          representation advisory fashion, in which does  
11          not involve filings with this court or appearance  
12          in this court, well maybe that is something else  
13          you can take up with them.

14  
15          I will also note that if they are not  
16          representing you, I do not know how that will  
17          affect their access to you within this area. I  
18          just can't answer that.

19  
20          So right now, do you want to be represented by  
21          anyone other than Major Bradley, and--but if I  
22          don't get any more from you, I am going to have  
23          to make a finding that you don't want anyone else

1           representing you. If you keep hemming and hawing  
2           about it.

3

4   **ACC:**       We have to end this question right now, because  
5           you are tired of it and I am tired of it. It is  
6           just I am not understanding it. I can't answer  
7           that question right now. That is my answer.

8

9   **Presiding Officer:** Do you wish to be heard Major Bradley?

10

11   **DC:**       Yes, I would. I mean, it sounds like what Mr.  
12           Muhammad is saying is that he would like to think  
13           about the question and I think that is fair for  
14           him to have time to think about this issue. It  
15           is a crucial issue. Something to have him, right  
16           now on the spot, with him having conflicting  
17           information on the representation by civilian  
18           counsel, that he should have the time to think  
19           about it and not be pressured at this point to  
20           make the decision in front of this Commission.

21

22   **Presiding Officer:** Thank you for that. At this time, the  
23           only person representing you is the Detailed



1 Defense Counsel, because I have heard from you  
2 that you have never authorized anyone else to do  
3 that and that--Major Bradley, sit, okay. I have  
4 already told you that if you change your mind  
5 later and want someone else to also represent  
6 you, certainly you can raise that, okay. But at  
7 this time right now, I hear Major Bradley, and I  
8 have heard nothing else.

9

10 **ACC:** One minute. So I have not said-----

11

12 **Presiding Officer:** You have----

13

14 **ACC:** I haven't told them not to do the work I have  
15 told them to do. They have done the right work.  
16 They are filing motions. What I have told them  
17 is they cannot sit down here and talk on my  
18 behalf. Now we have a problem because maybe your  
19 English is not my English and my understanding is  
20 not your understanding. Now I understand that I  
21 have to make a decision. Do I want them to  
22 represent me here? I am also on the outside. I

1 am not representing on the outside and here. Now

2 I----

3

4 **Presiding Officer:** Well we clarified one point, if they  
5 representing you in some other proceedings  
6 somewhere else, you can certainly have them  
7 represent you somewhere else. You mentioned  
8 habeas proceedings. If you want them to  
9 represent you in habeas proceedings but not this  
10 Commission, that is fine. But if they are going  
11 to represent you in this Commission, they are  
12 either in or out. And that is entirely up to you  
13 and them, and it is not up to me.

14

15 **ACC:** Let me get this straight, this civilian counsel,  
16 you can not order him to talk because he is not  
17 military counsel and actually he listens to me  
18 more than he would listen to you. Is that what I  
19 am supposed to believe?

20

21 **Presiding Officer:** If you request civilian counsel, okay,  
22 and they come in here and they are going to  
23 represent you, they will have to do some talking

1 as far as their qualifications. Excuse me, if  
2 they are not going to participate verbally in  
3 this courtroom, for whatever tactical reasons you  
4 have, and it turns out that your Detailed Defense  
5 Counsel is going to handle that representation in  
6 the courtroom, I mean, that is up to you.

7  
8 But if they are representing you, they will be  
9 here during all the proceedings unless excused by  
10 me, after talking about it with you, and you can  
11 work it out that way, if you want.

12  
13 Okay and we will explain, that, how that waiver  
14 of process works as far as if you waive their  
15 appearance at a subsequent hearing and you fully  
16 understand that when you waive that, proceedings  
17 go on with out them and we will take care of all  
18 business that comes up, despite them not being  
19 here; we can do that.

20  
21 But that will be only with leave granted by the  
22 Presiding Officer after discussion with you.

1   **ACC:**           Okay, as far as this problem, because we are  
2                   going to get to the next point, so, since they  
3                   said they are representing me, and you have them  
4                   as representing me, I don't mind them  
5                   representing me until we clarify this problem  
6                   that we have with them. Because I can see that  
7                   is not your problem. It is not your fault. You  
8                   have your POMs and they have their rulings.  
9  
10                  So, they represent me in this session right now,  
11                  but I gave them instructions to do some things  
12                  which they will not do, and then, the next time  
13                  we meet, I can give you a final judgment on this  
14                  issue. I can't reserve it, but I give you the  
15                  answer the next time. As far as we are concerned  
16                  right now, they still representing me. They can  
17                  come on the show.  
18  
19   **Presiding Officer:** Do you wish that they represent you?  
20                   It has to be more than, "I don't mind." Do you  
21                   want them to represent you in this matter.  
22

1   **ACC:**       That is the issue, because we are talking about  
2               wishes, wishes are--doesn't make it right. I  
3               wish to be represented by her. You don't talk  
4               about wishes. I said, since we can't clarify the  
5               question right now, and you have them as  
6               representing me, they can come on the show.

7  
8   **Presiding Officer:** Do you desire for them to represent you  
9               in this case?

10  
11   **ACC:**       I repeat, they can come on the show.

12  
13   **Presiding Officer:** Do you desire for anyone other than  
14               Major Bradley, and you can say desire, or want  
15               or----

16  
17   **ACC:**       Could you write desire? What is the meaning of  
18               desire because I am not understanding. We are  
19               not talking English.

20  
21   **DC:**        I am not understanding the court either. He said  
22               three times that he wants them to represent him,  
23               and you keep coming back with---

1

2 **Presiding Officer:** He said three times what?

3

4 **DC:** He would like them to represent him. At this  
5 point, they can represent.

6

7 **Presiding Officer:** Has she correctly stated your position?

8

9 **ACC:** Yes. I said in English, "They can come on the  
10 show."

11

12 **Presiding Officer:** Because you want them to?

13

14 **ACC:** Well if it wasn't for want, why would I say it.

15

16 **Presiding Officer:** Okay, well I will make a finding then  
17 that the Accused has stated that he wants to be  
18 represented by, and who are we talking about, Mr.  
19 Stafford Smith and Professor Marguiles?

20

21 **ACC:** I think that is what you have, yes.

22

23 **Presiding Officer:** So that is a, yes?

1

2   **ACC:**           Yes.

3

4   **Presiding Officer:**   Okay.

5

6   **ACC:**           Until further notice, that is.   Remember, next  
7                   time we meet, I am going to give you a final  
8                   decision on this.

9

10   **Presiding Officer:**   Right, and if you--okay, but they are  
11                   not going to come on and off the case, okay.

12

13   **ACC:**           I am listening.

14

15   **Presiding Officer:**   So if they are on, then they on.   If  
16                   you excuse them, they will be gone.

17

18   **ACC:**           There is no problem with that.   We will deal with  
19                   that one as it comes.

20

21   **Presiding Officer:**   Mr. Stafford Smith and Professor  
22                   Marguiles, you need to assume your appropriate  
23                   places at counsel table.

1

2 [The CDC and CDC2 did as directed.]

3

4 **Presiding Officer:** Mr. Muhammad, do you want any other  
5 counsel, other than those that are seated at the  
6 table at this time, to represent you in this  
7 matter?

8

9 **ACC:** Like I said, if I am allowed to have an attorney  
10 who is not an American citizen, and you say, yes,  
11 then I will give you the names of the people I  
12 want representing me here. No further want of  
13 it, but for the heck of it.

14

15 **Presiding Officer:** All right, I understand. Major  
16 Bradley, I would submit that if the defense  
17 wishes to pursue that matter, they should file an  
18 appropriate motion.

19

20 **DC:** We understand. Thank you.

21

22 **Presiding Officer:** Mr. Muhammad, in the event that counsel  
23 might disagree, the several counsel you have



1           there might disagree on a matter concerning your  
2           representation, I need to designate a lead  
3           counsel who will speak for you and the defense  
4           team. Who shall I designate as the lead counsel?  
5  
6   **ACC:**       We have--I have just been told that David Hicks  
7           has an Australian counsel. I am not sure, that  
8           means I can an Ethiopian counsel?  
9  
10   **Presiding Officer:** And I don't know anything about that.  
11           So, as----  
12  
13   **ACC:**       So you have no idea.  
14  
15   **Presiding Officer:** ----I indicated, you need to file the  
16           appropriate--your counsel need to file the  
17           appropriate motion.  
18  
19   **ACC:**       All right, we have to do that. Now about the  
20           lead counsel, well I am the lead counsel here  
21           because I am the one who is on trial. I have the  
22           answers. Nobody here can answer any of your

1           questions because we have no communications. So,  
2           I am lead counsel.

3

4   **Presiding Officer:** That is not going to be permitted. And  
5           you all can make a motion, if you want to seek  
6           ability to do that. But at this time, that is  
7           not going to be permitted. So I need for you to  
8           designate one of the lawyers at your table to be  
9           the lead counsel so I know who to speak to in the  
10          first instance.

11

12   **ACC:** I think we need to take a recess, because now you  
13          have confused me again.

14

15   **Presiding Officer:** Okay, we will return to that. We won't  
16          take a recess right now, but we will return to  
17          that shortly.

18

19   **ACC:** All right.

20

21   **Presiding Officer:** If you all need to talk about that.  
22          That is not one of the things that we have to  
23          figure out right now.

1

2 **ACC:** Well that is good because I am really confused.

3 You have to understand I am no lawyer.

4

5 **Presiding Officer:** I do understand that.

6

7 **ACC:** And 4 years under the ground and words change and  
8 you are in new word land now.

9

10 **Presiding Officer:** Mr. Stafford Smith, if you could please  
11 state your qualifications for the record.

12

13 **CDC:** Your Honor, I am apparently qualified under the  
14 rules of the Commission. So, is there anything  
15 else that I need to say?

16

17 **Presiding Officer:** Have you transmitted your notice of  
18 appearance to through the Chief Defense Counsel?

19

20 **CDC:** I am sure I have, yes.

21

1 **Presiding Officer:** Have you signed the civilian counsel  
2 agreement to practice before the Military  
3 Commission?

4  
5 **CDC:** Because I don't think it is legal, but yes, I  
6 have.

7  
8 **Presiding Officer:** So you have signed the agreement to  
9 apply by the applicable directives, regulations,  
10 orders, and the directions of me, as the  
11 Presiding Officer.

12  
13 **CDC:** With the reservation that I think it is  
14 illegitimate, but yes, and I will challenge it,  
15 obviously.

16  
17 **Presiding Officer:** And have you acted in any manner that  
18 might tend to disqualify you from practicing in  
19 this proceeding?

20  
21 **CDC:** I don't believe so.  
22

1 **Presiding Officer:** Have you been sworn with regard to your  
2 duties here?  
3  
4 **CDC:** Yes, I have, sir.  
5  
6 **Presiding Officer:** And have we received your notice of  
7 appearance?  
8  
9 **CDC:** Yes.  
10  
11 **Presiding Officer:** Thank you. Professor Marguiles, am I  
12 saying your last name correctly?  
13  
14 **CDC2:** That's right, Your Honor, it is Marguiles, with a  
15 long E.  
16  
17 **Presiding Officer:** I will attempt to say it correctly.  
18  
19 **CDC2:** Thank you, sir.  
20  
21 **Presiding Officer:** And I have been saying Professor, is  
22 that what you would like me to say?  
23

1   **CDC2:**       Mr. is fine, sir.

2

3   **Presiding Officer:** Is that what you prefer?

4

5   **CDC2:**       Mr. is fine.

6

7   **Presiding Officer:** If you could state your qualification,

8                   please.

9

10   **CDC2:**       I understand that I am qualified within the

11                   meaning of the Commissions, Your Honor.

12

13   **Presiding Officer:** Have you transmitted your notice of

14                   appearance through the Chief Defense Counsel?

15

16   **CDC2:**       I have, sir.

17

18   **Presiding Officer:** Have you signed the civilian counsel

19                   agreement to practice before the Military

20                   Commissions?

21

22   **CDC2:**       Subject to the same qualifications of Mr.

23                   Stafford Smith, Your Honor.

1

2 **Presiding Officer:** Have you acted in any manner that might  
3 disqualify you from practicing in this  
4 proceeding?

5

6 **CDC2:** Not so far as I am aware, Your Honor.

7

8 **Presiding Officer:** Have you been sworn with regard to your  
9 duties here?

10

11 **CDC2:** I have.

12

13 **Presiding Officer:** Very well. Thank you. Okay, given Mr.  
14 Muhammad's response with regard to lead counsel,  
15 and I will revisit that question with him a  
16 little later. In the meantime, I do need to  
17 speak to one of you. Unless I am advised that a  
18 certain person is taking a certain issue.  
19 Between the three lawyers is--would any of you  
20 like to suggest which one of you will be lead  
21 counsel until such time as we change that?

22

23 **DC:** At this----

1

2 **Presiding Officer:** If you are speaking to the Commission,  
3 you need to be behind the microphone.

4

5 **DC:** I am sorry. At this point, the defense is not  
6 ready to state who will be lead counsel, but if  
7 you would like to address any questions to me,  
8 and I can address to Mr. Muhammad.

9

10 **Presiding Officer:** And I agree, that that is the  
11 appropriate default position here. And then,  
12 Major Bradley, you just let me know if somebody  
13 else is going to be addressing a particular  
14 issue, okay?

15

16 Let me go back to the interpreter question.  
17 Based on the conversation that we have had  
18 between the Presiding Officer and parties to  
19 include Mr. Muhammad, over the last couple hours,  
20 it appears that he is able to understand and  
21 speak English, and I make that finding.

22



1           Based on the absence of a request by the defense  
2           for the service of a translator, I am not going  
3           to compel the defense to have a defense  
4           translator seated at counsel table or imposed  
5           upon the defense, although I do need to make  
6           clear, that per Commission Law, the defense is  
7           absolutely entitled to the service of one.

8  
9           If at any time, Mr. Muhammad, you or the Defense  
10          Counsel determine there is a need for a defense  
11          translator, you should simply let me know about  
12          it and we will make that happen. I would advise  
13          you that that should be made in a timely fashion,  
14          because an untimely request will not be something  
15          which we are going to allow to disrupt the flow  
16          and progress of the proceedings.

17  
18   **ACC:**       Can I ask you a question at this point, because  
19                this interpreter----

20  
21   **Presiding Officer:** No, not right now. Major Bradley, do  
22                you understand that?

23

1   **DC:**           Yes.

2

3   **Presiding Officer:** If you are speaking to me, then you  
4                   need to--I am going to try to limit your going up  
5                   and down, but----

6

7   **DC:**           Oh, I am sorry.

8

9   **Presiding Officer:** But I need you to get up to the podium  
10                  when you are speaking.

11

12   **DC:**           So you are asking if I understand it, or if Mr.  
13                  Muhammad understands it?

14

15   **Presiding Officer:** I am making a finding. He has not made  
16                  the election. I am making a finding based on our  
17                  conversation that he understands and speaks  
18                  English such that I am not going to require one  
19                  be put into services right now. If at any time  
20                  either your client or his Defense Counsel believe  
21                  there is a need for a defense translator, all you  
22                  need to do is tell me and one will be provided  
23                  for you.

1

2           You won't need to justify that either. All it  
3           needs to be is a timely request. Do you  
4           understand that?

5

6   **DC:**        So you are asking if I understand whether or not  
7           we need a translator. I am not quite sure I am  
8           understanding what you are asking. I am not--I  
9           am not----

10

11 **Presiding Officer:** What do you think I am asking?

12

13 **DC:**        I don't know if the question is directed towards  
14           me or directed towards the individual who might  
15           need the translator.

16

17 **Presiding Officer:** I am asking you, because you are  
18           Detailed Defense Counsel, you are representing  
19           your client. If your client, or you, determine  
20           you need one, you need to tell me.

21

22 **DC:**        So if my client tells me----

23

1 **Presiding Officer:** Because I am not going to keep going  
2 back and asking him.

3

4 **DC:** So if my client tells me he needs a translator, I  
5 tell you? I am just trying to get what you are  
6 asking.

7

8 **Presiding Officer:** It is as simple as that. Right. You  
9 are right.

10

11 All right, this is a good time for the midday  
12 break. The break will be for an hour and a half,  
13 which means we will be set to go gavel down at  
14 1305.

15

16 **ACC:** Sir, an objection.

17

18 **Presiding Officer:** Not right now.

19

20 **ACC:** I have a prayer at that time. I am not going to  
21 make it.

22

1 **Presiding Officer:** We will be set to go gavel down at

2 1305. The court is in recess.

3

4 *The Commission Hearing recessed at 1134, 6 April 2006.*

5

6 *The Commission Hearing was called to order at 1318, 6 April*  
7 *2006.*

8

9 **Presiding Officer:** The Commission will come to order. All

10 parties present when we recessed are again

11 present.

12

13 We were slightly delayed in coming back. I

14 learned during the break that the schedule that

15 we set did not take into account prayer schedule

16 of Mr. Muhammad, and his religious practices. I

17 did not know that. I did not take that into

18 account. I will seek to do that in the future so

19 that we build that into the schedule.

20

21 **ACC:** I was going to advise that.

22

1 **Presiding Officer:** That is what I thought. I figured that  
2 out after I left, but at that time, I was ready  
3 to take that recess. So now I have learned, and  
4 now I know, and we will try to work that into the  
5 schedule.

6  
7 Okay, POM 16 was provided to parties; notice of  
8 the rules of the Commission, trial practice  
9 concerning decorum of the Commission and there is  
10 a section on attire of the people involved in the  
11 tribunal.

12  
13 With regard to civilian participants, it states  
14 that for me, while suit and tie or equivalent is  
15 encouraged, civilian counsel and other civilian  
16 counsel and other civilian representatives of the  
17 party and civilian witnesses, except the  
18 detainees appearing before the tribunal, will at  
19 a minimum, wear at a minimum business casual  
20 attire.

21  
22 And then it gives some examples of acceptable  
23 business casual attire for me, including long

1 pants and button up collar shirts with sleeves,  
2 with or without sports jackets, and then there  
3 are some examples there of inappropriate civilian  
4 attire which includes clothing without tears, and  
5 is unfrayed, and then it further goes on that an  
6 Accused will appear in business casual attire, or  
7 if the Accused desires, culturally equivalent  
8 attire.

9  
10 It also states that in the event the Defense  
11 Counsel cannot with due diligence obtain  
12 sufficiently appropriate clothing for an Accused,  
13 the Defense Counsel will notify the prosecutor  
14 sufficiently in advance of trial to allow for the  
15 prosecutor to obtain the necessary clothing. The  
16 prosecutor will then take the actions necessary  
17 to obtain the clothing.

18  
19 It also goes on to state that an Accused will not  
20 appear at a Commission session wearing prison  
21 attire. These rules are with regard to the  
22 Accused, as I would expect counsel probably know  
23 one of their primary functions is to protect the

1           presumption of innocence on the part of the  
2           Accused.

3  
4           The rule with regard to not appearing in prison  
5           attire is for the protection of the Accused such  
6           that the members or the people that are making  
7           the findings with regard to guilt or innocence or  
8           sentence would not be inferring anything adverse  
9           to the Accused based on the wearing of prison  
10          attire.

11  
12          So that rule is there to buttress the presumption  
13          of innocence protection of the Accused in these  
14          proceedings.

15  
16          I will note for the record the Accused is wearing  
17          an orange, loose-fitting orange top and I  
18          couldn't quite tell, but orange pants of some  
19          sort. And in some jurisdictions, the  
20          jurisdiction that I normally practice, orange  
21          jumpsuits are a form of prison attire. Frankly,  
22          I don't know what the different attire regs are  
23          at the facility here.



1

2           So, the issue I just wanted to raise with Defense  
3           Counsel is my concern that you know about this  
4           rule here and the purpose for the rule, and to  
5           see if you had taken that into consideration.  
6           While Defense Counsel had a discussion about the  
7           attire of the Accused.

8

9           Major Bradley, are you familiar with POM 16 and  
10          the provisions I have read to you.

11

12 **DC:**        I think Mr. Binyam wants to speak about his  
13          cultural wear.

14

15 **Presiding Officer:** No, I am asking you a question.

16

17 **DC:**        While his dress, since you brought up his dress,  
18          and you believe it is prison garb, and it is not  
19          prison garb, I think if Mr. Muhammad needs to  
20          address the type of the clothing that he has on,  
21          particularly since the POM talks about wearing  
22          cultural clothing.

23

1 **Presiding Officer:** Okay, stay up there. Here is my  
2 question. Are you familiar with the provisions  
3 of POM 16?

4  
5 **DC:** That states that the Accused can wear cultural  
6 clothing, yes, which Mr. Muhammad has on.

7  
8 **Presiding Officer:** Are you familiar with the provisions of  
9 POM 16?

10  
11 **DC:** Yes, as he does have cultural clothing. Yes.

12  
13 **Presiding Officer:** Okay. We are going to go back to the  
14 manner of your speaking with me. Don't interrupt  
15 me. Your last answer could be interpreted and  
16 was interpreted by me as having some measure of  
17 exasperation with me. You need to drop that  
18 attitude. Do you understand me?

19  
20 **DC:** I am trying to let the court know that Mr.  
21 Muhammad would like to speak on this issue of his  
22 cultural clothing. I mean, I think that----

23

1 **Presiding Officer:** I want you to be responsive to my  
2 question and----  
3  
4 **DC:** Yes.  
5  
6 **Presiding Officer:** ----my directions.  
7  
8 **DC:** I said, yes, to your question, Your Honor.  
9  
10 **Presiding Officer:** Okay, so drop the attitude when----  
11  
12 **DC:** I don't have----  
13  
14 **Presiding Officer:** ----speaking with me.  
15  
16 **DC:** ----an attitude.  
17  
18 **Presiding Officer:** I am perceiving one from you.  
19  
20 **DC:** Well.  
21  
22 **Presiding Officer:** And that----  
23

1   **DC:**           You also perceived earlier----

2

3   **Presiding Officer:**   Don't interrupt me----

4

5   **DC:**           ----my facial----

6

7   **Presiding Officer:**   Do not interrupt me, because I have

8                   advise you about that before as----

9

10   **DC:**           And----

11

12   **Presiding Officer:**   Major Bradley.   I will tell you when I

13                   am done, okay, because you seem to be having

14                   trouble understanding when I am done.   So don't

15                   speak until I tell you to, all right?

16

17   **DC:**           Fair enough, yes.

18

19   **Presiding Officer:**   Do you understand my--do you understand

20                   that I am perceiving an unprofessional attitude

21                   and tone on your part?   Do you understand what I

22                   am telling you?   I am not asking you if you

23                   agree, I am asking you if you understand.

1

2 **DC:** As what you are saying, yes.

3

4 **Presiding Officer:** I am counseling you at this point to  
5 change your tone when speaking to me. It is  
6 inappropriate as a major speaking to a colonel  
7 and it is inappropriate as counsel speaking to a  
8 Presiding Officer in this Commission. Do you  
9 understand what I am telling you?

10

11 **DC:** Yes.

12

13 **Presiding Officer:** I don't expect to have to have this  
14 conversation and repeat it back to you. Your  
15 demeanor thus far has been unacceptable. It is  
16 unprofessional and I think it would be  
17 unprofessional in any courtroom with regard to  
18 your attitude towards the bench. Don't respond.  
19 I want you to think about it and I want you to  
20 amend the way you are talking with me.

21

22 Now, are you familiar with POM 16, in its  
23 entirety?

1  
2 **DC:** No.  
3  
4 **Presiding Officer:** Do you have a copy of it there?  
5  
6 **DC:** Yes.  
7  
8 **Presiding Officer:** Sit down and read it.  
9  
10 **DC:** The part that you are talking about it, I am  
11 familiar with it.  
12  
13 **Presiding Officer:** Sit down and----  
14  
15 **DC:** The entire----  
16  
17 **Presiding Officer:** I want you to sit---  
18  
19 **DC:** Paragraph for paragraph----  
20  
21 **Presiding Officer:** I want you to sit down and read POM  
22 16. Go ahead.  
23

1 [The DC did as directed.]

2

3 **ACC:** While they are reading.

4

5 **Presiding Officer:** No, we will all wait together.

6

7 **ACC:** I asked them to bring this. So you should ask me  
8 about the problem.

9

10 **Presiding Officer:** Mr. Muhammad, when I need for you speak  
11 to me again, and when I will allow you to speak  
12 to me again, I will let you know. Until then,  
13 you need to remain silent.

14

15 Okay, Major Bradley, you have read it now, is  
16 that right?

17

18 **DC:** Yes.

19

20 **Presiding Officer:** Okay, stay where you are. This is for  
21 all counsel. I think one of the minimum  
22 standards of professional practice is that you  
23 have read the rules of court for where ever you

1           are practicing. So I will direct all counsel to  
2           insure that you have read all of the current  
3           POMs, those that are published or those that  
4           might be published before each session of the  
5           proceedings.

6  
7           I am certainly not going to quiz you on them and  
8           don't expect you to recall with complete clarity  
9           all of the aspects of all the different rules,  
10          but you should, at a minimum, have read them all  
11          before you get here.

12  
13          All right, so now that being said. So, taking  
14          into account what you have indicated, the  
15          defense's sense that this a culturally  
16          appropriate attire for the Accused; is that your  
17          position Major Bradley?

18  
19   **DC:**       My position is that Mr. Muhammad can explain the  
20               cultural dress.

21  
22   **Presiding Officer:** No, I am speaking with you. You are  
23               the Detailed Defense Counsel. He is not



1           representing himself in these proceedings, you  
2           are. And right now, I am asking you, if you all  
3           elected to use the--use these clothing instead of  
4           something else despite the fact that I mentioned  
5           that someone, not me, but someone might confuse  
6           them for prison garb and that that might have  
7           some impact on the presumption of innocence. Did  
8           you think about that?

9  
10 **DC:**        I--did I think about the fact that somebody could  
11           mistake his cultural clothing as prison garb?

12  
13 **Presiding Officer:** And I talking about--basically about  
14           the orange color, which in, as I mentioned, at  
15           least in the jurisdiction where I am, is a common  
16           color for a prison jumpsuit.

17  
18 **DC:**        Well in the jurisdiction of Commission or habeas  
19           over in the camp, there are various colors.  
20           There is brown, there is white. I think there is  
21           orange. I haven't personally seen orange. I  
22           know that Mr. Muhammad wears brown at times and

1           he is not in brown, so I am not quite sure how  
2           you are going to----

3

4   **Presiding Officer:** Well all I want to accomplish here  
5           today is to raise the issue to you so you can  
6           think about it, so that in the future, especially  
7           when we get to the portion of having the members  
8           of the Commission and the presentation of the  
9           evidence, that you have taken that into  
10          consideration, and if you elect to have him wear  
11          orange despite the concern I have raised with  
12          you, I think that is probably your choice, okay?  
13          But I wanted to make sure that you at least  
14          understood that and took that into account,  
15          because this rule, again, is for the benefit of  
16          your client, and it is your job--Major Bradley, I  
17          am speaking with you.

18

19   **DC:**           Yes, I was just going to grab the rule as---

20

21   **Presiding Officer:** It is your job----

22

1   **DC:**           ----speak, if that is my--I am still listening.

2                   I can listen and----

3

4   **Presiding Officer:** Okay, it is your job to think about  
5                   that and counsel your client on that. And after  
6                   thinking about that and if he wants to wear what  
7                   he is wearing today, because he likes orange, or  
8                   that is culturally appropriate clothing and that  
9                   outweighs the issue I have raised, that is fine.

10

11                   All I am doing here is to make sure you are  
12                   thinking about the presumption of innocence  
13                   because it is your job to think about those  
14                   things and I am just helping you right now. Do  
15                   you understand?

16

17   **DC:**           Yes.

18

19   **Presiding Officer:** That is all I am doing.

20

21   **DC:**           May I respond?

22

1   **Presiding Officer:**   None is necessary.   I want you to think  
2                            about it before we come back.   That is all.  
3  
4   **DC:**                Think about his cultural clothing--or the color  
5                            and the---  
6  
7   **Presiding Officer:**   And the color and the presumption of  
8                            innocence, and make sure that you all make and  
9                            reach a decision.  
10  
11   **ACC:**             Uh huh.   May I say something?  
12  
13   **Presiding Officer:**   No, no you may not.  
14  
15   **ACC:**             This is my uniform.  
16  
17   **Presiding Officer:**   No, you may not.   I have already told  
18                            you that.   You need to remain silent.  
19  
20   **ACC:**             You said you would give me a chance to speak.  
21

1 **Presiding Officer:** Not on this point and not right now. I  
2 did not tell you that and you are not going to  
3 have that chance.

4

5 **DC:** With----

6

7 **Presiding Officer:** Do you understand, Major Bradley?

8

9 **DC:** With all due respect, going by the POM, it says  
10 cultural wear, cultural attire, and I don't  
11 think, and no disrespect to you, I am trying to  
12 respectful.

13

14 **Presiding Officer:** That is good, you should.

15

16 **DC:** No disrespect to you or myself or counsel at the  
17 table, there are cultures that we don't  
18 understand about, and I would like him to explain  
19 the cultural wear that he has on. So, if it is a  
20 color issue, I think he can explain that, but I  
21 think the other part is that what he has on is  
22 cultural wear and that is what he is trying to  
23 explain to this court.

1

2

Because you have emphasized to me the POMs. You have emphasized to me Commission--Commission Law. So why is it in Commission Law--it states here cultural attire and obviously either you, or I, or someone is confused about what cultural attire is and Mr. Muhammad would like to explain what he has on for the court, at least for the record, because now we have this lengthy record about his clothing and I think that needs to be explained. I am not able to explain that.

12

13

In addition, I wanted to also mention that Mr. Muhammad made a request to come in here in shackles this morning because he has been shackled for the last 2 years and the only time he has to come----

17

18

19 **ACC:**

Four.

20

21 **DC:**

Four years, he has been shackled and so now we parade him in here without his shackles. He made that request. I talked to people also about

23

1           that. I would like him to explain his position,  
2           particularly with the cultural wear. I think the  
3           record needs to show--that needs to be shown on  
4           the record.

5

6   **Presiding Officer:** Okay, that is not necessary or  
7           appropriate at this time. If the defense wishes  
8           to raise a motion with regards to any of these  
9           issues for some sort of relief, you can do that  
10          in accordance with POM 4-3 and we will litigate  
11          it in due course.

12

13          I have raised the issue with you. I am doing it  
14          for your benefit, and we are done with it. You  
15          may resume your seat.

16

17   **DC:** Can I just--I understand, the other thing I just  
18          want to make on the record, and I think it may be  
19          clear, there are no Commission people here, so  
20          any prejudice, in this particular proceeding  
21          today, doesn't exist because there are no  
22          Commission individuals here.

23

1 And I am quite sure in you being reasonable and  
2 your judgment, and this obviously didn't strike  
3 you right away as being a problem, as prison  
4 clothes, I mean, we have been in court for 2 and  
5 half hours, and we come back after break and this  
6 becomes an issue, that obviously it didn't  
7 prejudice you at the time and we would be aware,  
8 if Commission Members were here of that--of what  
9 Mr. Muhammad is wearing.

10  
11 **Presiding Officer:** Okay, thank you for that. I will note  
12 for the record that this was simply the time when  
13 I found it most appropriate to deal with the  
14 issue. I certainly take no prejudice from it. I  
15 again, noted these things strictly to provide  
16 some assistance, resisted or otherwise, by the  
17 defense.

18  
19 Okay, next issue. On the 2nd of February of  
20 2005, the Commission received a motion from the  
21 defense to proceed to ex parte with regard to a  
22 claimed conflict issue. This is motion is in RE



1           25. At that time, the nature of the claimed  
2           conflict was not revealed in any way.

3  
4           On the 14th of February 2005, the government  
5           response was filed and that is in RE 29.

6  
7           On the 5th of April 2006--excuse me, the  
8           Presiding Officer received a memo from Mr.  
9           Stafford Smith, which has been marked as RE 40,  
10          which indicates that the defense was withdrawing  
11          its motion for the ex parte session.

12  
13          Is that correct, Major Bradley?

14  
15   **DC:**        I am sorry. Can you repeat the question?

16  
17   **Presiding Officer:** Sure. Shall I just skip down to the  
18          last part, or do you want to hear it all again?

19  
20   **DC:**        Yes, just the last part.

21  
22   **Presiding Officer:** Okay, on the 5th of April 2006, the  
23          Presiding Officer received a memo from Mr.

1           Stafford Smith, which has been marked as RE 40,  
2           which indicated to me that the defense was  
3           withdrawing its request for the ex parte session.

4  
5           It said something else, in terms of something  
6           like, the Accused was waiving his right to an ex  
7           parte session, which, of course, he does not have  
8           that right. But I understood that to be a  
9           withdrawal of the motion for the ex parte  
10          session, and I am trying to determine if I  
11          understood that correctly.

12  
13 **DC:**       Yes, you understand that clearly. That request  
14          was withdrawn at the right of Mr. Muhammad to  
15          withdraw the ex parte hearing and there was a  
16          reason for it and Mr. Muhammad, again with all  
17          due respect to the court, wants to explain why he  
18          is withdrawing the ex parte motion.

19  
20 **Presiding Officer:** Okay, that is of no consequence. I  
21          understand the defense is withdrawing the motion  
22          for the ex parte session.

23

1 In that event, I note that RE 40 contained among  
2 other things a document described as Attachment  
3 A. The version of Attachment A that was in RE 40  
4 was redacted, in part, by the defense. RE 40 was  
5 also accompanied by a separate unredacted version  
6 of Attachment A. The unredacted version of  
7 Attachment A was labeled by the defense as an ex  
8 parte submission to the Presiding Officer. This  
9 unredacted copy of Attachment A will be marked as  
10 Review Exhibit 41.

11  
12 The defense made this ex parte submission to the  
13 Presiding Officer based on the defense's position  
14 that the redacted portion contained privileged  
15 material. Even though my review of the redacted  
16 material has not led me to conclude that it  
17 contained any privileged information, at this  
18 time, I am directing that RE 41 be made a sealed  
19 exhibit.

20  
21 With regards to RE 40 and 41, I further note that  
22 they contain only proffers and arguments of

1           counsel regarding the so-called conflict of  
2           interest issue.

3  
4           Additionally, even if the proffers in REs 40 and  
5           41 are taken at face value, my assessment at this  
6           time is that the circumstances described do not  
7           establish either a clear conflict of interest, or  
8           ethical dilemma with regard to the Defense  
9           Counsel in this case.

10  
11          Finally, there has been no showing of a  
12          determination by an appropriate authority that a  
13          conflict of interest exists between the rules,  
14          regulations, and instructions applicable to trial  
15          by Military Commission and the branch specific  
16          Armed Forces Rules of Professional Conflict, or  
17          rules of other jurisdictions that regulate the  
18          professional conduct of attorneys, such that,  
19          Section 3(C) of Appointing Authority Regulation  
20          Number 3 is called into question.

1           The defense is certainly free to pursue this  
2           matter through a motion for appropriate relief  
3           filed in accordance with POM 4-3.

4  
5           I would further note that if this matter is going  
6           to be raised before this Commission, it will be  
7           done in an orderly and professional fashion in  
8           accordance with the rules of court published in  
9           the POMs.

10  
11          In this regard, I would expect proper preparation  
12          and presentation of evidence, to include  
13          testimony of all necessary witnesses.

14  
15          The decision whether or not to pursue this matter  
16          with appropriate licensing authorities or with  
17          the Commission lies with the defense. At this  
18          time, however, the matter has not been properly  
19          raised with the Commission.

20  
21          I have previously provided counsel for both sides  
22          a summarized biography that has been marked as  
23          Review Exhibit 18. I have also received written

1           voir dire questions from the defense. Those  
2           questions, along with my written answers to those  
3           questions were marked as Review Exhibit 33.

4

5           Does the government have any additional questions  
6           beside those already answered in Review Exhibits  
7           18 and 33?

8

9   **PROS:**       The government does not, sir.

10

11 **Presiding Officer:** Defense?

12

13 **DC:**       Your Honor, in all due respect, we are not at  
14           this session of voir dire. I know this court may  
15           be, but we have to go back to this issue of the  
16           conflict because I have an opinion--an expert  
17           from Pennsylvania that I cannot go forward any  
18           further, despite your findings.

19

20           In addition, if you look at Appointing Authority  
21           Regulation Number 3, there is clear Commission  
22           rules on how, when there are conflict, which I--  
23           there is obvious conflict, I have a Pennsylvania,

1 a 19-page opinion, advisory opinion that I cannot  
2 go forward. The Air Force rules tells me  
3 something different. The Commission rules tell  
4 me something different. So, there is an obvious  
5 conflict.

6  
7 And in reading the Appointing Authority  
8 Regulation Number 3, at Paragraph 3(c), it states  
9 that when there is a conflict, and I quote, if a  
10 conflict exists between the rules, regulations,  
11 and instructions applicable to the trials by  
12 Military Commission, and the branch specific  
13 Armed Forces Rules of Professional Conduct, or  
14 rules of other jurisdictions, that regulate the  
15 professional conduct of attorneys, the Appointing  
16 Authority for Military Commissions, or the  
17 Presiding Officer of a Military Commission, shall  
18 apply the rules, regulations, instructions  
19 applicable to the trials by Military Commission,  
20 only after the legal advisor to the Appointing  
21 Authority for the Military Commission coordinated  
22 with the Judge Advocate General of the

1           Appropriate Armed Forces, or the appropriate  
2           officials of other jurisdictions.

3  
4           And we are squarely in that predicament at this  
5           point. And, I cannot go forward when I have an  
6           advisory opinion of 19 pages that I cannot  
7           represent Mr. Muhammad under the current  
8           structure of OMC Defense office.

9  
10   **Presiding Officer:** Okay, you have already heard my  
11           statements on that regard. In the package that  
12           was submitted, which was not a motion for any  
13           sort of relief from this Commission, but was  
14           rather a memo submitted, which withdrew a motion  
15           for an ex parte session and then commented on a  
16           number of other things.

17  
18           I did note there was an opinion in there from a  
19           private attorney in Pennsylvania, and I saw his  
20           CV in there that he has significant experience  
21           with regard to Pennsylvania ethical rules, but he  
22           is not an appropriate authority to make a



1           determination like that for the purposes of this  
2           court.

3  
4           What we need here, is a determination by an  
5           appropriate authority from Pennsylvania, or from  
6           the Air Force in your case, or perhaps from me as  
7           the Presiding Officer here, that there is a  
8           conflict.

9  
10          Based on what I received there, even though it  
11          was not a motion for relief from you, there is  
12          not a clear conflict between the rules and we are  
13          not going to debate that here absent a motion by  
14          you, which in the course of our correspondence  
15          over the last several months, I suggested to you,  
16          as an option, were you to seek pursue this  
17          matter. You elected, apparently, not to do that,  
18          which is within your right.

19  
20          So at this point, we have no showing of a  
21          determination by an appropriate authority that a  
22          conflict exists between the rules, regulations,  
23          and instructions applicable to the trial by the

1 Military Commission, the branch specific Armed  
2 Forces Rules of Professional Conduct, or rules of  
3 other jurisdictions that regulate the  
4 professional conduct of attorneys, such that,  
5 Section 3(c), of the AAR which you read, is  
6 called into effect.

7  
8 Your proffers and the opinions Mr. Miller, I  
9 think it is, don't persuade me that we are in  
10 that position. Now as far as what you have  
11 perceived as an ethical problem with you, I  
12 cannot advise you and it is not my function to  
13 advise you how to deal with your licensing  
14 authority.

15  
16 But I can tell you that until such time that you  
17 relieved of your responsibilities, you will  
18 continue to represent your client as you've been  
19 detailed to do, and I am directing you to do  
20 that.

21  
22 Okay----

1   **DC:**           Well--I--I--I have to respond, because we are  
2                   going to have a serious conflict here, but can I  
3                   have a moment to confer with counsel?

4  
5   **Presiding Officer:**   Yes.

6  
7   **DC:**           If--I--I would like to respond to that because I  
8                   am assuming that you are not licensed in  
9                   Pennsylvania and I--and if--and I would like to  
10                  explain to you the licensing practices in  
11                  Pennsylvania and the efforts I took to get an  
12                  advisory opinion, and I think that is important  
13                  for this court to understand and put on the  
14                  record.   So the assumption that I don't have a  
15                  valid advisory opinion; I do have a valid  
16                  advisory opinion in Pennsylvania.

17  
18                  Before I go through what I did to get an advisory  
19                  opinion, let me explain to you the Pennsylvania  
20                  Bar licensing or Pennsylvania Bar Association  
21                  procedures in Pennsylvania.

22

1           Pennsylvania, as I unfortunately learned in  
2           trying to get an advisory opinion does not have a  
3           unified bar. I don't know how many states have  
4           that unique position, but Pennsylvania is one of  
5           the states where there is not a unified bar,  
6           which means if there is an ethical dilemma the  
7           counsel has limited options.

8  
9           One of those options is to go to the person's  
10          local bar, which my local bar is Delaware County  
11          Bar Association. Delaware County's Bar  
12          Association does not have an ethics board. I  
13          talked with the President of the bar and was  
14          advised by the President of the bar, if I wanted  
15          an advisory opinion, I would probably end up  
16          having to hire an expert, someone who has  
17          expertise on professional responsibility, which  
18          Mr. Samuel Miller, with his 19-page advisory  
19          opinion, definitely does, as this court has  
20          recognized.

21  
22          In addition to that, in Pennsylvania not having a  
23          unified bar, there is Pennsylvania Bar

1 Association known as the PBA. PBA is a state bar  
2 association but it is a volunteer membership,  
3 which means that attorneys do not have to be part  
4 of the PBA, the state bar, to practice.

5  
6 I did go to the Pennsylvania Association or PBA  
7 for an opinion. Because I was not a member, they  
8 would not provide me with an opinion.

9  
10 I also went to what is known as the Pennsylvania  
11 Disciplinary Board, in fact, that was the first  
12 place I went to to seek an advisory opinion. The  
13 Pennsylvania Disciplinary Board, as I was told  
14 when I talked with the board and wrote the board,  
15 is that they do not give advisory opinions, that  
16 what--that they do take discipline action against  
17 attorneys who violate the rules of ethics and the  
18 professional rules of responsibilities in  
19 Pennsylvania, but they do not give advisory  
20 opinions.

21  
22 As a result, I was advised by the Pennsylvania  
23 Disciplinary Board, that if I wanted an advisory

1 opinion, again, that I would have to seek the  
2 services of someone who was an expert in the area  
3 of Pennsylvania rules--of professional rules of  
4 responsibility. Again, another reason why I went  
5 to Mr. Miller.

6  
7 I was also advised at one point in trying to seek  
8 an advisory opinion to contact an agency, and I  
9 believe the agency was known as the Pennsylvania  
10 Ethics Board. I contacted the Pennsylvania  
11 Ethics Board, the Pennsylvania Ethics Board  
12 informed me that they do not advise--do not  
13 provide advisory opinions of that nature. That  
14 they are organized or set up to take ethical  
15 questions regarding violations by elected  
16 officials or ethical violations of elected  
17 officials.

18  
19 So under Pennsylvania, and the way that  
20 Pennsylvania is structured, the only way a  
21 private counsel can get an advisory opinion is in  
22 the fashion in which I sought, which was through

1           an expert and someone who knew Pennsylvania  
2           ethics rules to provide that opinion.

3  
4           So, there was no other way for me to get an  
5           opinion in Pennsylvania and that is a proper  
6           authority and that I presented to this court.

7  
8   **Presiding Officer:**   Okay, I think all the information that  
9           you just recited was--is all contained in RE 40,  
10          is that correct?

11  
12   **DC:**           Uh--I--the outline, yes.   The fact that there is  
13          no other way to get an advisory opinion in  
14          Pennsylvania other than the steps I have taken;  
15          no.   And, you are not going to get an advisory  
16          opinion from anywhere else in Pennsylvania unless  
17          they are a member of the PBA or they obtain the  
18          services of an individual who knows Pennsylvania  
19          rules about professional responsibility.

20  
21   **Presiding Officer:**   Do you have any written correspondence  
22          between you and any of those agencies?

23

1   **DC:**           I do, unfortunately I don't have them here with  
2                   me in court. I might have--some of the  
3                   correspondence I gave to them. I don't know if I  
4                   have all the correspondence they gave to me.  
5                   Sometimes I was doing it by telephone because I  
6                   was trying to get an opinion as quickly as  
7                   possible.

8  
9                   I might have with me the letter I--at some point  
10                  I had contacted the PBA, the Pennsylvania Bar  
11                  Association by telephone. I later wrote them a  
12                  letter even asking them to waive their fee so I  
13                  could get an opinion from them. They never  
14                  gotten back with--in touch with me. So I may  
15                  have some of this correspondence with me on the  
16                  island, but I am not quite sure if I have  
17                  everything.

18

19   **Presiding Officer:** Okay, why don't you sit down.

20

21   [The DC did as directed.]

22



1 **Presiding Officer:** On the 30th of November 2005, this is  
2 reflected in RE 7, Major Bradley was Detailed  
3 Defense Counsel in this case. And at that time  
4 she was advised in that detailing letter she  
5 should immediately contact the Chief Defense  
6 Counsel if she became aware of any conflict.

7  
8 On 16 December 2005, as reflected in RE 8, Mr.  
9 Stafford Smith was certified as the counsel in  
10 this case.

11  
12 As reflected in RE 25, on the 29th and the 31st  
13 of December, or between that time, Major Bradley  
14 first met with the Accused, at which time, she  
15 and Mr. Stafford Smith discussed with the Accused  
16 an apparent conflict in her representation of him  
17 in a conflict in which they indicated affects the  
18 entire process, including so long as it persists,  
19 the involvement of any civilian counsel.

20  
21 On the 4th of January 2006, as reflected in RE  
22 12, the Defense Counsel sent an email to the  
23 Presiding Officer with notice of this perceived

1 conflict of interest issue with an indication  
2 that they had contacted the Chief Defense  
3 Counsel.

4  
5 On the 5th of January--why don't we skip down?  
6 On the 6th of January--no back up, on the 5th of  
7 January 2006, the Assistant Presiding Officer  
8 sent an email to the Chief Defense Counsel  
9 seeking information regarding this conflict of  
10 interest situation in an effort to move toward  
11 some sort of resolution.

12  
13 On the 6th of January 2006, the Chief Defense  
14 Counsel sent an email to the Assistant Presiding  
15 Officer with regard to this matter, and that is  
16 in RE 15.

17  
18 On the 12th of January 2006, reflected in RE 16,  
19 the Presiding Officer sent an email to all  
20 parties urging that they take prompt action to  
21 address and resolve this perceived conflict  
22 issue. And I advised them, that essentially if  
23 they could not resolve the conflict, they should

1 consider taking steps to withdraw from the case.  
2 I noted that if they were unsure whether the  
3 circumstances required or justified such action  
4 on their part, they should resolve it in a manner  
5 such as the issue does not interfere with the  
6 orderly litigation of this case.

7  
8 Additionally, that in the meantime, they should  
9 also do such work as necessary to discharge their  
10 duties within the established trial schedule.

11  
12 Accordingly, this matter has been--counsel have  
13 been advised to take steps to address this matter  
14 for some time and that includes the possibility  
15 of making a motion to this Commission for some  
16 sort of appropriate relief. That has not  
17 happened.

18  
19 With regard to Mr. Miller's letter, again, that's  
20 one way of looking at things, I suppose, but it  
21 certainly does not amount to a determination by  
22 an appropriate authority that there is actually a  
23 conflict of interest problem in this case.

1  
2 Accordingly, I refer back to my earlier  
3 statements that the defense is free to support  
4 this matter with a motion for appropriate relief  
5 to be filed in accordance with POM 4-3. In which  
6 case, it can be appropriately litigated in this  
7 forum and if the evidence demonstrates that some  
8 sort of relief should be granted, which I can't  
9 even speculate on at this point, we will take  
10 that up and I will see what I can do.

11  
12 In the meantime, however, Major Bradley, you are  
13 directed by this court to continue to represent  
14 your client and discharge your duties to which  
15 you have been assigned.

16  
17 **DC:** Well my--and I agree, and I have an ethical duty  
18 which is higher, in all due respect, to this  
19 court, and that is from the Pennsylvania Bar  
20 which licensed me, with which out--I mean, you  
21 only assigned me to a case. I am licensed by  
22 Pennsylvania. I mean that is my licensing  
23 authority and that, at this point, is where I

1           have to lean. Which shows there is an actual  
2           conflict. Which goes back to the Appointing  
3           Authority Regulation that I am under a duty, if  
4           there is an ethical conflict, to notify of the  
5           ethical conflict, which I have done in front of  
6           the tribunal for the Commission.

7  
8           Your Honor, as a PO, as a Presiding Officer, you  
9           are under an ethical obligation to resolve the  
10          conflict and not just move on.

11  
12          We have a conflict. The conflict has not been  
13          resolved and AAR Number 3 tells us how to resolve  
14          that conflict.

15  
16          Moreover, given the fact that I had a conflict, I  
17          wasn't about to step into this ethical--cross  
18          that ethical line and start looking into the  
19          substantive matter of cases and start doing voir  
20          dire, looking at discovery. I have not looked at  
21          discovery because there is an ethical problem and  
22          I could not cross that line and I will not cross  
23          that line.

1

2

I also want to make clear that about 2 weeks ago,

3

when we had our ex parte motion before the

4

Commission, we were willing and ready as a

5

defense team to go forward and present a motion

6

and documents to support the reason for that ex

7

parte motion on the conflict issue until we

8

understood that mail by our client was being

9

read. And as that issue has developed,

10

understanding that confidential privilege, legal

11

mail had----

12

13 **PROS:**

Sir, the government is going to object at this

14

time.

15

16 **DC:**

You can object all you want.

17

18 **Presiding Officer:** Counsel. Okay----

19

20 **DC:**

I know I am being disrespectful.

21

22 **Presiding Officer:** Stop speaking----

23

1   **DC:**           But I have a concern.

2

3   **Presiding Officer:** Stop speaking. Okay, here is another

4                   rule, which you should already know. Never,

5                   never ever speak across to opposing counsel.

6                   Have you heard that rule before?

7

8   **DC:**           No.

9

10   **Presiding Officer:** That is remarkable. Okay, you have

11                   heard it now. Never ever speak across to

12                   opposing counsel. Do you understand that? Okay.

13

14                   With regard to your objection, I am going to let

15                   her finish.

16

17   **PROS:**        Yes, sir.

18

19   **Presiding Officer:** Go ahead.

20

21   **DC:**           You told me I couldn't interrupt and he

22                   interrupted by--and all I want to get to the

23                   point is----

1

2 **Presiding Officer:** Okay, stop speaking----

3

4 **DC:** ----is as----

5

6 **Presiding Officer:** Stop speaking----

7

8 **DC:** ----as far as----

9

10 **Presiding Officer:** Stop speaking. When people make

11 objections, they will interrupt. That is

12 appropriate. He says, "Objection." Then you

13 should stop. And if I am going to listen to it,

14 I will say, "Basis?" Okay, so objections is one

15 of those times where you can actually interrupt.

16 Do you understand?

17

18 **DC:** I understand that.

19

20 **Presiding Officer:** Now he objected, and I said I'm going

21 to let you continue. I didn't even ask him the

22 basis, did I? Because I want you to be able to

23 finish. Okay, go ahead.



1

2   **DC:**           This all ties back into the whole conflict issue.  
3                   So, 2 weeks ago when we learned that--when mail  
4                   by--from Mr. Muhammad had been given to the  
5                   prosecutor, we were at a dilemma of whether or  
6                   not to submit our ex parte motion until we had  
7                   talked to Mr. Muhammad in regards to--in regards  
8                   to information that was in the letter.

9

10                  I really don't want to go into details into  
11                  exactly what happened, and I would be more than  
12                  happy to explain if we were in ex parte, that  
13                  whole fiasco on Mr. Muhammad's mail being read  
14                  and what was in that letter, that confidential  
15                  letter, legal document, addressed to Mr. Stafford  
16                  Smith, that led us to not being able to even go  
17                  forward to submit any additional motions or  
18                  documents to the tribunal.

19

20                  I would love to go into details if the court  
21                  wants to go into detail but I would rather do it  
22                  ex parte given some of the privileged and  
23                  confidential information that was in that letter

1           on why the defense team felt they could not go  
2           forward at this time.

3

4   **Presiding Officer:**   Okay.

5

6   **DC:**           Do you--I was going to ask Mr. Muhammad if he  
7           cared if we went forward to let--to put on the  
8           record in open court----

9

10   **Presiding Officer:**   Okay, I have heard what you had to say.

11           The flipside of your repeating the same argument  
12           over again is that I am not going to repeat the  
13           same ruling over again.

14

15           There has been no determination by an appropriate  
16           authority that there is a conflict between the  
17           rules that are applying or that you are  
18           conflicted out in this situation.   The proffers  
19           that you have made to me, on their face, do not  
20           provide clear information of that, that I am  
21           going to sua sponte do something.

22

1           If you want to make a motion with regard to this  
2           matter, which could include any number of matters  
3           that you have alluded to, some of them may be  
4           really good things to litigate about. I don't  
5           know. But if we are going to do that, if we are  
6           going to talk about them, we are going to do it  
7           in a proper fashion, with a motion, an  
8           opportunity for the government to investigate and  
9           respond to the things you said, and then, perhaps  
10          you will get whatever relief it is that you are  
11          looking for, okay?

12  
13          If it is a motion regarding the structure of the  
14          OMC Defense section, well then you should make  
15          that motion, and bring forward the evidence that  
16          you have described in some of the things have  
17          submitted to the court. When I say, "you," I  
18          mean the defense.

19  
20          None of those matters appear to me to be  
21          privileged. I can understand why you are  
22          thinking and rethinking bringing them up in

1 court, but it is not because they are privileged,  
2 okay? It is because of some other reason.

3  
4 In the meantime, the motion of the conflict of  
5 interest issue has not been raised here. Your  
6 memo and your emails do not raise issues in this  
7 case. Motion practice in accordance with POM 4-3  
8 do.

9  
10 With regard to your interaction with your  
11 licensing authority, which also happens to be my  
12 licensing authority, I am a Pennsylvania  
13 attorney, I am not here, it is not my function to  
14 advise you how to deal with that. I have told  
15 you the steps that you need to take. The fact  
16 that you are having trouble doing that, that is  
17 not my issue. That is your issue. If you are  
18 having trouble getting relief from them or  
19 determination from them, perhaps you should make  
20 a motion to the Commission here. Perhaps you  
21 should have made it a month ago. We are not  
22 going to interrupt the litigation of this case  
23 because you haven't filed a motion a month ago

1           when I was suggesting to you that perhaps you  
2           should do that.

3  
4           Okay, that was your choice and it continues to be  
5           your choice, Major Bradley. And, that is where  
6           we are.

7  
8           So, we are done with that issue. If you want to  
9           raise it, raise it properly. If you have a  
10          problem with your bar, sort it out.

11  
12          In the meantime, I am directing you to fulfill  
13          your duties to zealously represent your client,  
14          which includes preparation for this trial, and  
15          representing him in this courtroom. And, that is  
16          a direct order from me to you, which you will  
17          disobey at your own peril frankly.

18  
19   **DC:**           May I confer with counsel, please.

20  
21   **Presiding Officer:** Yes, do you want a recess?

22  
23   **CDC:**          Yes, please.

1

2 **Presiding Officer:** How long would you like?

3

4 **CDC:** Fifteen minutes, please.

5

6 **Presiding Officer:** Okay, we will come back at 1435. We  
7 are in recess.

8

9 *The Commission Hearing recessed at 1416, 6 April 2006.*

10

11 *The Commission Hearing was called to order at 1434, 6 April*  
12 *2006.*

13

14 **Presiding Officer:** The Commission will come to order. All  
15 parties present when the court recessed are again  
16 present.

17

18 Mr. Stafford Smith?

19

20 **CDC:** Thank you very much, sir. Your Honor, I don't  
21 want to compound the issue of conflict, but I  
22 have advised Major Bradley that she needs a  
23 lawyer at this point, and we need further time to

1 figure out--and certainly if I advise her, that  
2 is a huge conflict. But, it seems to me, and I  
3 have been there personally one time myself and  
4 were facing contempt charges and you have got to  
5 have an independent lawyer. That is obviously  
6 where we are headed.

7  
8 So, may I ask this if we could? I would  
9 respectfully ask if we could take time to  
10 research this a bit more. I think we have got to  
11 get an independent lawyer for Major Bradley to  
12 see what her obligations are. They are one of  
13 two things that occur to me, but you know, I  
14 don't know the answers to them. And I don't  
15 think I can answer them. So, may we request  
16 that, that would be in the form of an oral  
17 request for time to work out what her legal and  
18 ethical exposure is in this case?

19  
20 **Presiding Officer:** Okay, no. That request is untimely.  
21 Parties have been on notice of this issue for  
22 quite some time, as I have outlined. I  
23 appreciate your concern and I shared the same

1 concerns earlier and I advised all the parties to  
2 take appropriate steps so as to not interfere  
3 with the litigation in this case.

4

5 Should the defense desire to pursue the matter, a  
6 motion should be raised for appropriate relief  
7 with this Commission in accordance with POM 4-3.  
8 But nothing has changed with regard to this issue  
9 for quite some time, and we are not going to  
10 finish our business today because the defense did  
11 not take the appropriate steps to resolve it, or  
12 seek to resolve it in an appropriate fashion  
13 before today.

14

15 **CDC:** Your Honor, if I may, for various reasons that  
16 are privileged that I can't go into, the defense  
17 very much did follow that. And what I would make  
18 a request, a reasonable, I hope, request is this;  
19 could we have a recess so we can research the  
20 issue?

21

22 We couldn't even find the appropriate rule when  
23 we were up there in the time allowed. And you



1 know, if necessary, we will file a written motion  
2 on that, but my advice, quite frankly, at this  
3 moment to Major Bradley is to take the 5th and  
4 not to answer any further questions in the  
5 context of these proceedings because we know  
6 where it headed. And I can't let her, as a  
7 fellow member of the bar; do that.

8  
9 And yet, I am in a conflict. I obviously can't  
10 be the one advising her because I am there for  
11 Mr. Muhammad. We are in a hopeless position and  
12 I just ask the court to be reasonable.

13  
14 **Presiding Officer:** Okay, your request is denied. Thank  
15 you.

16  
17 All right, now, the government had no additional  
18 voir dire. Does the defense have any additional  
19 voir dire beyond the voir dire questions that  
20 were answered in REs 18 and 33?

1   **CDC:**       Your Honor, I am in a conflict in this position  
2               in this, but my advice to Major Bradley, whose  
3               role that is, is that she should remain silent.  
4  
5   **ACC:**       This obviously is a problem here.  Fix it.  Don't  
6               just roll over it.  
7  
8   **Presiding Officer:**  Mr. Muhammad, you need to remain silent  
9               unless I ask you to speak.  Do you understand?  
10  
11  **ACC:**       You are not asking me.  That is the problem.  Ask  
12               me.  
13  
14  **Presiding Officer:**  No, I will ask you for a comment, or I  
15               will provide you an opportunity to speak at  
16               appropriate times  
17  
18  **ACC:**       Seriously.  
19  
20  **Presiding Officer:**  We had some of those earlier and we may  
21               have some of those in the future.  
22  
23  **ACC:**       But we have an issue here.

1

2 **Presiding Officer:** With regard to this matter, it is not  
3 appropriate for you to comment at all and you  
4 will not. It is as simple as that.

5

6 Major Bradley, I have already provided you an  
7 order to fulfill your duties representing your  
8 client. Do you understand that?

9

10 **CDC:** Your Honor, may----

11

12 **Presiding Officer:** Mr. Smith--Mr. Stafford Smith, excuse  
13 me. Please sit down. Please sit down.

14

15 **CDC:** May I be heard?

16

17 **Presiding Officer:** No. Sit down.

18

19 [The CDC did as directed.]

20

21 **Presiding Officer:** Now, Major Bradley, you need to stand  
22 up and go to the lectern.

23

1 [The DC did as directed.]

2

3 **Presiding Officer:** I previously provided you with an order  
4 to fulfill your assigned duties as Detailed  
5 Defense Counsel in this case. And you, I believe  
6 you indicated that you understood that order. I  
7 think the record demonstrates that.

8

9 [Pause.]

10

11 **Presiding Officer:** And so my question to you is, do you  
12 wish to ask any additional voir dire questions on  
13 behalf of your client at this time?

14

15 **DC:** With all do respect, I exercise the 5th  
16 Amendment, my 5th Amendment rights.

17

18 **Presiding Officer:** Okay, I think you misperceive the  
19 application of that aspect of the law in this  
20 case. I will interpret that as an answer by you  
21 that you have no additional questions for the  
22 Commission. You may be seated again.

23

1   **DC:**           Again, I am exercising my 5th Amendment rights.  
2                   That is not a, "yes," or a, "no," in invoking and  
3                   letting the court know I have 5th Amendment  
4                   rights and am exercising them.

5

6   **Presiding Officer:** Mr. Stafford Smith or Professor  
7                   Marguiles, do either of you wish to ask any  
8                   additional questions beyond those already in the  
9                   record?

10

11   **CDC:**         Your Honor, based on what the court has  
12                   previously said in the record as to the defense  
13                   right to make strategic decisions on this, and  
14                   the direct statement made twice, that we can do  
15                   that, and due to the fact that those issues are  
16                   privileged, respectfully, I decline to answer the  
17                   question.

18

19   **Presiding Officer:** I am sorry. You are going to have to  
20                   state that again because it didn't make any sense  
21                   the first time.

22

23   **CDC:**         Okay.

1

2 **Presiding Officer:** Break it down for me.

3

4 **CDC:** Let me read back what you said, and this of  
5 course, is my notes, so forgive me if I am  
6 slightly inaccurate, but my notes of what you  
7 said, or your answer were, "They don't have to say  
8 anything while they are sitting there. They  
9 don't have to do anything when they are sitting  
10 there."

11

12 Then you said later on, "The defense may make  
13 privileged decisions as instructed by the client  
14 about whether we do this." Those decisions have been  
15 made. They have been made for very valid  
16 reasons, which are privileged. In that context,  
17 I think that the court understands where we are.  
18 The court can always ask Mr. Muhammad if he has  
19 got anything to add to that, but respectfully, I  
20 decline to answer the question as to whether  
21 there are further questions to be done on voir  
22 dire.

23

1 I will note for the record that nowhere in United  
2 States jurisprudence for the last 200 years has  
3 it been possible for someone who is Accused in a  
4 criminal case to knowingly, intelligently, and  
5 voluntarily waive a legal right under the  
6 circumstances of taking the 5th Amendment. Thank  
7 you.

8

9 **Presiding Officer:** Okay----

10

11 **CDC:** May I sit down, sir?

12

13 **Presiding Officer:** Yes.

14

15 [The CDD did as directed.]

16

17 **Presiding Officer:** Okay, I will note that on the 10th of  
18 February 2006, at a time well after the defense  
19 had apparently identified this claim, conflict of  
20 interest, the defense submitted 340 voir dire  
21 questions for the military judge. I answered  
22 those questions and the questions in the record  
23 encompass 53 pages, which is well beyond any

1           other voir dire that I have been aware of my time  
2           on the bench as a military judge.

3  
4           I will also note that in the course of providing  
5           those answers, I sua sponte provided a number of  
6           comments that were not raised by the questions,  
7           but which I deemed to be appropriate in terms of  
8           full disclosure.

9  
10          I will view the defense's decision not to ask  
11          questions at this time as a waiver of the  
12          opportunity to ask additional questions. And  
13          with that in mind, so if there is any  
14          misunderstanding and you want to revisit that and  
15          ask questions, because I perfectly willing to  
16          answer your questions.

17  
18          I don't recognize that there is any conflict  
19          here. I don't believe it is an appropriate  
20          invocation of the 5th Amendment and I am not  
21          going to allow legal arguments that are not well  
22          developed, I won't go so far as to say spurious,  
23          because they are just coming here without any



1           real development or basis; I am not going to  
2           allow them to cause the proceedings to come to a  
3           halt at this point.

4

5           If you want to make motions about things, the  
6           defense, you are invited to do so in accordance  
7           with the POMs. But, you haven't been doing that  
8           and we are not going to just stop the proceedings  
9           because you have, for whatever reason you have  
10          here, to try and not do things.

11

12 **CDC:**       May I note our objection and if I may, just  
13           briefly explain the basis for our objection?

14

15 **Presiding Officer:** Now is this different from what you  
16           said before?

17

18 **CDC:**       Oh yes.

19

20 **Presiding Officer:** Because they took it all down the first  
21           time.

22

23 **CDC:**       Oh no, I have got some further objections.

1

2 **Presiding Officer:** Okay.

3

4 **CDC:** Our first objection is that we do believe that in  
5 15 minutes it is impossible to resolve an issue  
6 of future potential incarceration of counsel.

7

8 Second, we are under specific instructions by Mr.  
9 Muhammad ultimately to develop enormous number of  
10 questions that would come out to what Your Honor  
11 submitted in the voir dire questions, but, we  
12 can't possibly do it now.

13

14 Third, and I was specifically told to say this,  
15 we have requested that that be made public on the  
16 record, because if we are not allowed to make  
17 those--do those questions in the future, we  
18 sincerely expect the New York Time, the Wall  
19 Street Journal, and the Miami Herald, to follow  
20 up on those questions which clearly should be  
21 asked, with all due respect of the court.

22

1           So with that, we would note our objection to that  
2           process. Thank you.

3

4   **Presiding Officer:** Very well. There being no further  
5           questions from the defense, does the government  
6           have a challenge for cause?

7

8   **PROS:**       The government has no challenge, sir.

9

10   **Presiding Officer:** Does the defense have a challenge for  
11           cause?

12

13   **CDC:**       The defense is not in a position to make that  
14           decision but I would ask that Mr. Muhammad can  
15           make his statement now.

16

17   **Presiding Officer:** No, he is not going to address the  
18           court at this time.

19

20           Major Bradley, you are the Detailed Defense  
21           Counsel and I am going to ask you; does the  
22           defense have a challenge for cause?

23

1   **DC:**           Again, I apologize, I am invoking my 5th  
2                   Amendment rights.

3

4   **Presiding Officer:** There being no challenge for cause from  
5                   the defense, I find that I am qualified to serve  
6                   in this Military Commission as the Presiding  
7                   Officer.

8

9   **ACC:**         I don't think so.

10

11   **Presiding Officer:** All personnel--Mr. Muhammad----

12

13   **ACC:**         You know, I don't think so.

14

15   **Presiding Officer:** You are being directed now to remain  
16                   silent. Do you understand that?

17

18   **ACC:**         I thought you said----

19

20   **Presiding Officer:** If you do not comply with my directions  
21                   to remain silent unless I give you permission to  
22                   speak, you will end up waiving your right to be  
23                   present in these proceedings.

1

2   **ACC:**       All right.

3

4   **Presiding Officer:** All personnel appear to have the

5               requisite qualifications and all personnel

6               required to be sworn, have been sworn.

7

8               Major Bradley, have you and the Accused

9               previously been provided a copy of the charge,

10              and if you think the 5th Amendment prevents you

11              from answering a question like that, you are

12              sorely mistaken.

13

14   **CDC:**       Your Honor, if I may address the---

15

16   **Presiding Officer:** Would you like to answer this question

17              for the defense? Because that is all I want for

18              now is an answer to the question that I have

19              read?

20

21   **CDC:**       If I may note for the record----

22

1 **Presiding Officer:** No, you may not. I want you to answer  
2 the question first and then you can ask me your  
3 question.

4

5 **CDC:** No, I am going to make an objection, Your Honor,  
6 I am not making a statement. I would just like  
7 to note for the record the objection, for the  
8 purposes of the record, that counsel's position  
9 is that she is in a conflict situation, it is not  
10 just the 5th Amendment situation she is in, and  
11 that is a problem too. That is why she can't go  
12 forward.

13

14 **Presiding Officer:** I would agree she is in a difficult  
15 position because I am directing her, ordering  
16 her, to perform her duties. She violates that  
17 order at her own peril and that is black book,  
18 long-standing military law. And, I would be  
19 really concerned about her doing that because her  
20 responsibility to follow my orders is crystal  
21 clear.

22

1           The perceived conflict that you have alluded to  
2           in the defense briefs is an issue which requires  
3           extensive litigation, and in the meantime, if it  
4           is to be raised, and in the meantime she has an  
5           order from this court to proceed, which almost  
6           certainly protects her in her home jurisdiction.

7  
8           A home jurisdiction, which in rule 8.5 from the  
9           Pennsylvania Disciplinary Code dictates that a  
10          lawyer shall not be subject to discipline if the  
11          lawyer's conduct conforms to the rules of a  
12          jurisdiction in which the lawyer reasonably  
13          believes the predominant effect of the lawyer's  
14          conduct will occur.

15  
16          And the suggestion that the predominant rules are  
17          something other than Commission Law and the  
18          orders of the Presiding Officer is fanciful, at  
19          best.

20  
21          Accordingly, I am going to go back to Major  
22          Bradley here, and you should not be acting as her  
23          lawyer, I am going to go back to her as an

1 officer of considerable experience, apparently,  
2 given her grade, to follow my orders, to get up  
3 there and answer my question about whether she  
4 and her client have been provided with a copy of  
5 the charge sheet.

6  
7 **CDC:** May I note on the record, Your Honor, the  
8 objection. First, that the court is now giving a  
9 lawyer, who is facing criminal charges, legal  
10 advice, which is clearly inappropriate, and I  
11 would orally state my intention to move to  
12 disqualify the court. I have been in this  
13 situation before.

14  
15 Second, the question of what that disciplinary  
16 rule exactly means is exactly what she needs  
17 independent advice on, not advice from the court.

18  
19 And that is why, with all due respect, I had  
20 asked you to give us time to get her independent  
21 advice. It is totally inappropriate for that  
22 advice to come in the form of an order.



1           And I admire her courage, but I am here to defend  
2           her too, in this situation, as a member of the  
3           bar, although I am in a total conflict situation  
4           there. It is impossible for us to go forward,  
5           and I simply don't see why we want to mess up  
6           this whole process by rushing through that when  
7           there is a series of violations.

8

9   **Presiding Officer:** Thank you.

10

11   **CDC:** Thank you.

12

13   **Presiding Officer:** Major Bradley, are you refusing to  
14           answer my question that I have just posed to you?

15

16   **CDC:** My advice is that she takes the 5th Amendment,  
17           Your Honor.

18

19   **Presiding Officer:** Major Bradley--Mr. Smith, I heard you  
20           the first, second, and the third time. Major  
21           Bradley, are you refusing my order to answer this  
22           question?

23

1   **DC:**           I am not refusing any order. I mean, I am at an  
2                   ethical dilemma. Not only am I at an ethical  
3                   dilemma at this point, which the court has not  
4                   resolved, I am also at--this court, which keeps  
5                   saying it is supposed to be full and fair is also  
6                   putting Mr. Muhammad in a situation of having  
7                   counsel provide ineffective assistance of  
8                   counsel, which is another violation. So you are  
9                   asking me to now step into a situation of  
10                  ineffective assistance of counsel along with the  
11                  other ethical problems that I am currently  
12                  facing.

13

14   **Presiding Officer:** Given your lack of response to my  
15                   direction; Trial Counsel, do you have another  
16                   copy of the charge sheet.

17

18   **PROS:**       Yes, sir.

19

20   **Presiding Officer:** Bailiff, please get it from the  
21                   prosecutor.

22

23   [The bailiff did as directed and handed it to the PO.]

1

2 **Presiding Officer:** Okay, if you could hand this to Mr.

3 Muhammad, please.

4

5 [The bailiff did approached the ACC.]

6

7 **ACC:** That is in English. I don't know, want it.

8

9 **Presiding Officer:** Let the record reflect--just put it in

10 front of him.

11

12 [The bailiff did as directed.]

13

14 **Presiding Officer:** Let the record----

15

16 **ACC:** On the record, this is not----

17

18 **Presiding Officer:** Mr. Muhammad, you need to remain

19 silent. Let the record reflect that the Accused

20 has been presented with a copy of the charge

21 sheet.

22

1           The prosecutor will announce the general nature  
2           of the charge.

3

4   **PROS:**       Sir, the general nature of the charge in this  
5           case is conspiracy to attack civilians,  
6           conspiracy to attack civilian objects, conspiracy  
7           to commit murder by an unprivileged belligerent,  
8           conspiracy to destroy property by an unprivileged  
9           belligerent, and conspiracy to commit terrorism.

10

11   **Presiding Officer:** Does the defense desire the charge be  
12           read, Major Bradley?

13

14   **CDC:**       Your Honor, may we refer to that to Mr. Muhammad  
15           who would like to respond to that?

16

17   **Presiding Officer:** No. He is not representing himself at  
18           these proceedings. I am asking Major Bradley,  
19           who I have been advised is the lead counsel here,  
20           although other members of the defense may----

21

22   **DC:**        I am going to object to that. That is not on the  
23           record that I am lead counsel. I have never said

1           that because there is a conflict issue, so I  
2           would like that clarified that I am not lead  
3           counsel.

4

5 **Presiding Officer:** I believe your recollection of the  
6           record is mistaken at this point.

7

8 **DC:**           I stated I would take----

9

10 **Presiding Officer:** Major Bradley----

11

12 **DC:**           ----stated I would----

13

14 **Presiding Officer:** Major Bradley----

15

16 **DC:**           ----take questions.

17

18 **Presiding Officer:** Major Bradley, do not start arguing  
19           with me. Does the defense desire that the charge  
20           be read?

21

22 **CDC:**          Your Honor, I am not in a position to answer that  
23           question under this process.

1

2 **Presiding Officer:** Very well. We will have the charge  
3 read.

4

5 Trial counsel.

6

7 **PROS:** Jurisdiction for this Military Commission is  
8 based on the President's determination of July  
9 29th, 2005 that Binyam Ahmed Muhammad, a/k/a  
10 Talha al Kini, a/k/a Foad Zouaoui, a/k/a Taha al  
11 Nigeri a/k/a John Samuel is subject to his  
12 Military Order of November 13th, 2001.

13

14 The charged conduct alleged against Binyam  
15 Muhammad is triable by a military commission.

16

17 General allegations; Al Qaida ("the Base"),  
18 was founded by Usama bin Laden and others in  
19 or about 1989 for the purpose of opposing  
20 certain governments and officials with force  
21 and violence.

22

1           Usama bin Laden is recognized as the emir  
2           (prince or leader) of al Qaida.

3  
4           A purpose or goal of al Qaida, as stated by  
5           Usama bin Laden and other al Qaida leaders,  
6           is to support violent attacks against  
7           property and nationals (both military and  
8           civilian) of the United States and other  
9           countries for the purpose of, inter alia,  
10          forcing the United States to withdraw its  
11          forces from the Arabian Peninsula and in  
12          retaliation for U.S. support of Israel.

13  
14          Al Qaida operations and activities are  
15          directed by a shura (consultation) council  
16          composed of committees, including: political  
17          committee; military committee; security  
18          committee; finance committee; media  
19          committee; and religious/legal committee.

20  
21          Between 1989 and 2001, al Qaida established  
22          training camps, guesthouses, and business  
23          operations in Afghanistan, Pakistan, and

1           other countries for the purpose of training  
2           and supporting violent attacks against  
3           property and nationals (both military and  
4           civilian) of the United States and other  
5           countries.

6  
7           In 1992 and 1993, al Qaida supported violent  
8           opposition of U.S. property and nationals by,  
9           among other things, transporting personnel,  
10          weapons, explosives, and ammunition to Yemen,  
11          Saudi Arabia, Somalia, and other countries.

12  
13          In August 1996, Usama bin Laden issued a  
14          public "Declaration of Jihad Against the  
15          Americans," in which he called for the murder  
16          of U.S. military personnel serving on the  
17          Arabian peninsula.

18  
19          In February 1998, Usama bin Laden, Ayman al  
20          Zawahiri, and others, under the banner of  
21          "International Islamic Front for Fighting  
22          Jews and Crusaders," issued a fatwa  
23          (purported religious ruling) requiring all



1 Muslims able to do so to kill Americans,  
2 whether civilian or military, anywhere they  
3 can be found and to "plunder their money."  
4

5 On or about May 29, 1998, Usama bin Laden  
6 issued a statement entitled "The Nuclear Bomb  
7 of Islam," under the banner of the  
8 "International Islamic Front for Fighting  
9 Jews and Crusaders," in which he stated that  
10 "it is the duty of the Muslims to prepare as  
11 much force as possible to terrorize the  
12 enemies of God."  
13

14 Since 1989, members and associates of al  
15 Qaida, known and unknown, have carried out  
16 numerous terrorist attacks, including, but  
17 not limited to: the attacks against the  
18 American Embassies in Kenya and Tanzania in  
19 August of 1998; the attack against the USS  
20 COLE in October 2000; and the attacks on the  
21 United States on September 11, 2001.  
22

1 Charge, conspiracy: Binyam Muhammad, in  
2 Afghanistan, Pakistan, and other countries,  
3 from on or about May 2001 to on or about  
4 March 2002, willfully and knowingly joined an  
5 enterprise of persons who shared a common  
6 criminal purpose and conspired and agreed  
7 with Usama bin Laden (a/k/a Abu Abdullah),  
8 Saif al Adel, Dr. Ayman al Zawahiri (a/k/a  
9 "the Doctor"), Muhammad Atef (a/k/a Abu Hafs  
10 al Masri), Abd al Hadi al Iraqi, Zayn al  
11 Abidin Muhammad Husayn (a/k/a Abu Zubayda  
12 hereinafter "Abu Zubayda"), Jose Padilla  
13 (a/k/a Abdullah al Muhajir), Khalid Sheikh  
14 Mohammad (a/k/a Mukhtar) and other members  
15 and associates of the al Qaida organization,  
16 known and unknown, to commit the following  
17 offenses triable by military commission:  
18 attacking civilians; attacking civilian  
19 objects; murder by an unprivileged  
20 belligerent; destruction of property by an  
21 unprivileged belligerent; and terrorism.

1 In furtherance of this enterprise and  
2 conspiracy, Binyam Muhammad and other members  
3 or associates of al Qaida committed the  
4 following overt acts:

5  
6 On or about May 2001, after a recent  
7 conversion to Islam, Binyam Muhammad, a  
8 trained electrical engineer, traveled to  
9 Afghanistan and attended al Qaida's al Farouq  
10 training camp, where he received training in  
11 light weapons such as the Kalishnikov,  
12 Simonov, PKA, rocket-propelled grenades and  
13 crew-served weapons.

14  
15 In early summer 2001, while Binyam Muhammad  
16 was at al Farouq, Usama Bin Laden visited the  
17 camp several times and lectured Binyam  
18 Muhammad and other trainees about the  
19 importance of conducting operations against  
20 the United States, Europe, and Israel. During  
21 one of these lectures Usama bin Laden told  
22 the group "something big is going to happen

1 in the future" and to "get ready" or words to  
2 that effect.

3  
4 During August 2001, after completing his  
5 training at al Farouq, Binyam Muhammad  
6 attended a city warfare course in Kabul where  
7 he was to receive 10 days of pistol training,  
8 ten days of training on the AK-47, and ten  
9 days of "room to room" combat. Due to lack  
10 of ammunition, Binyam Muhammad only received  
11 training on the AK-47 assault rifle.

12  
13 In September 2001, after completing his  
14 abbreviated city warfare course, Binyam  
15 Muhammad moved to the front lines in Bagram  
16 to experience fighting between the Taliban  
17 and the Northern Alliance. While on the  
18 front lines, Binyam Muhammad took a course in  
19 firing mortars, map reading, targeting and  
20 firing.

21  
22 After a short time on the front lines in  
23 Bagram, Binyam Muhammad attended an

1 explosives training camp in Kabul where he  
2 received training on explosives and  
3 "homemade" bomb-making. Also in attendance at  
4 this camp was Richard Reid.

5  
6 After traveling from Kabul to Khandahar,  
7 Binyam Muhammad was directed to go to Zormat,  
8 Afghanistan where he met with Abd al Hadi al  
9 Iraqi. While in Zormat, Binyam Muhammad was  
10 told al Qaida had a "mission" for him.

11  
12 Binyam Muhammad then traveled to Birmel,  
13 Afghanistan, and was introduced to Abu  
14 Zubayda. Abu Zubayda promised him training  
15 in Pakistan building remote-control-  
16 detonation devices for explosives that were  
17 to be used against American forces. After  
18 his training was complete, Binyam Muhammad  
19 was to return to Afghanistan to make  
20 detonation devices and teach others how to  
21 construct them.

1 Binyam Muhammad traveled with Abu Zubayda  
2 from Khowst into Pakistan, stopping at  
3 several guesthouses and a madrassa (religious  
4 school), where he first met Jose Padilla,  
5 Ghassan al Sharbi, and Jabran Said al  
6 Qahtani. Abd al Hadi al Iraqi and Abu Zubayda  
7 directed Binyam Muhammad (along with al  
8 Sharbi and al Qahtani) to receive training on  
9 building remote-controlled detonation devices  
10 for explosives.

11  
12 From the madrassa in Khowst, Binyam Muhammad  
13 traveled to a guesthouse in Lahore, Pakistan,  
14 where he and Jose Padilla reviewed  
15 instructions on a computer in the guesthouse  
16 on how to make an improvised "dirty bomb."  
17 Ghassan al Sharbi translated these  
18 instructions into Arabic and read them aloud  
19 to a group in the guesthouse.

20  
21 After arriving in Lahore, Binyam Muhammad and  
22 Jose Padilla met with Abu Zubayda in private  
23 and discussed plans for attacks against the

1 United States. Abu Zubayda stated that he  
2 preferred Binyam Muhammad conduct an  
3 "overseas operation" instead of going back  
4 into Afghanistan as originally planned.  
5 Binyam Muhammad agreed to carry out an  
6 operation inside the United States.  
7

8 While in Lahore, Binyam Muhammad, Jose Padilla  
9 and Abu Zubayda discussed the feasibility of  
10 constructing the improvised "dirty bomb" from the  
11 instructions they had read on the computer. Abu  
12 Zubayda also discussed other plans against the  
13 United States with Binyam Muhammad and Jose  
14 Padilla, such as blowing up gas tankers and  
15 spraying people with cyanide in nightclubs. Abu  
16 Zubayda told Binyam Muhammad that one of the  
17 purposes for the attacks on the United States was  
18 to help "free the prisoners in Cuba." After  
19 spending a few days in guesthouses in Lahore and  
20 Faisalabad, Binyam Muhammad and Jose Padilla were  
21 sent to Karachi to meet Saif al Adel (the head of  
22 al Qaida's security committee) and Khalid Sheikh  
23 Mohammad (a top level al Qaida planner and

1 leader). Saif al Adel and Khalid Sheikh Mohammad  
2 told Binyam Muhammad that their mission would  
3 involve targeting high-rise apartment buildings  
4 that utilized natural gas for its heat and also  
5 targeting gas stations. The apartment building  
6 plan called for renting an apartment and  
7 utilizing the natural gas in the buildings to  
8 detonate an explosion that would collapse all of  
9 the floors above. Binyam Muhammad and Jose  
10 Padilla agreed to conduct such an operation.

11  
12 In early April 2002, Binyam Muhammad was  
13 given approximately \$6,000 U.S. dollars and  
14 Jose Padilla was given approximately \$10,000  
15 U.S. dollars to get to the United States and  
16 met with Khalid Sheikh Mohammad for last  
17 minute briefings.

18  
19 On or about April 4th, 2002, Binyam Muhammad  
20 and Jose Padilla were both detained at  
21 passport control at the airport in Karachi  
22 (Binyam Muhammad for a forged passport and  
23 Jose Padilla due to visa violations), but



1           were released the next morning.   Khalid  
2           Sheikh Mohammad arranged to get Binyam  
3           Muhammad a different forged passport while  
4           Jose Padilla continued on to Chicago,  
5           Illinois.

6  
7           On or about April 10th, 2002, Binyam Muhammad  
8           was arrested at an airport in Karachi,  
9           Pakistan attempting to get back to London  
10          using a forged passport.

11  
12   **Presiding Officer:**   Very well, while current Presiding  
13          Officer Memoranda are listed in RE 36, these and  
14          any subsequent modifications are in effect as the  
15          rules of court for this Commission.   The current  
16          filings inventory has been marked as RE 42.

17  
18          Counsel for either side wish to raise any matters  
19          with regards as to the accuracy of these  
20          exhibits?   Defense?

21  
22   **CDC:**           Your Honor, I would refer that to Mr. Muhammad  
23          who would like to address that issue.

1

2 **Presiding Officer:** No. Mr. Smith--excuse me, Mr. Stafford  
3 Smith, Mr. Muhammad is not representing himself  
4 at these proceedings. He will not be speaking  
5 for the defense. Does the defense, and you  
6 certainly may, okay, Professor Marguiles, I am  
7 sorry.

8

9 **CDC2:** It is Marguiles, thank you.

10

11 **Presiding Officer:** I am sorry, Mr. Marguiles or Major  
12 Bradley certainly may. Do you have any objection  
13 with regard or point out anything about the  
14 inaccuracy of those review exhibits.

15

16 **CDC:** Your Honor, with all due respect, I finally note  
17 my objection to that. Mr. Muhammad is currently  
18 without counsel because his designated defense--  
19 Detailed Defense Counsel is unable to respond and  
20 under this tribunal's previous ruling, we are not  
21 in a position to, so he is currently without  
22 counsel.

23

1 **Presiding Officer:** How do you figure that you are not able  
2 to? I said you don't have to speak but you are  
3 certainly are entitled to. If he is directing  
4 you not to, that certainly makes for a cumbersome  
5 process because you are going to ultimately end  
6 up, likely you are going to be waiving a lot of  
7 things where it may be in your client's interests  
8 to do things.

9  
10 But that is your choice and your client's choice.  
11 If you want to waive all the objections to all  
12 the things we are doing here, you have, as far as  
13 I can see, waived the opportunity for the  
14 additional voir dire, again, despite the fact  
15 that you conducted substantial voir dire with all  
16 the same ethical issues in front of you. That is  
17 your choice.

18  
19 I am not going to force the defense to do many  
20 things. I will ask for some simple answers from  
21 time to time, as in now. Do you have any  
22 objections to these matters? If you have none,  
23 you have none. That is fine.

1

2 **CDC:** Your Honor, we do have objections, and the first  
3 objection is 2 or 3 days of defense voir dire is  
4 not a simple matter, and in that context, it is  
5 not something that can be waived by this  
6 tribunal's instruction. Certainly people who  
7 weren't meant to do the case are meant to do the  
8 case.

9

10 That is just ineffective and it is pure and  
11 simple. Sir, in this context, we are not in a  
12 position where certainly one can magically wave  
13 the want after 15 minutes of frantic efforts to  
14 try and figure out the most basic issues of  
15 criminal liability. Of course that is not a  
16 voluntary decision any more than Mr. Muhammad's  
17 statements under the coercion he has been in the  
18 past.

19

20 I don't know me to throw a parallel between razor  
21 blades and this, of course, but this cannot be in  
22 any sane legal system a knowing, intelligent, and  
23 voluntary waiver.

1

2

And all we are asking for here is to revisit in a

3

few months and we don't want to waste your time,

4

and we are certainly not waiving anything

5

whatsoever. I am absolutely not waiving anything

6

and I am asserting my client's right to respond

7

to issues that he wants to respond to.

8

9 **Presiding Officer:** Mr. Stafford Smith, your eloquence does

10

not make your argument any more reasonable. You

11

have had sufficient time to prepare. It was

12

obvious from the questions that you submitted

13

before that there was considerable preparation

14

done with regard to the voir dire issue, since

15

that is the one you mentioned right there. We

16

are past that now, however, and now I am asking

17

if there is any concerns with regards to the

18

accuracy of RE 36 and 42?

19

20 **CDC:**

And, Your Honor, I am not in a position, of

21

course, to respond on any of that. That is not

22

my role.

23

1 **Presiding Officer:** Okay, the defense has no objection.

2 Thank you.

3

4 Does the defense have any motions that they wish  
5 to raise at this time? If you wish, you may  
6 reserve your motions to a later date.

7

8 **CDC:** No, orally, Your Honor, we move to disqualify the  
9 court, and orally we would move to reconsider  
10 every ruling that has been made in this--in front  
11 of a different tribunal in this proceeding.

12

13 And orally, we would certainly move to have the  
14 court withdraw from the record any notion that an  
15 issue as sensitive as all the questions I have  
16 asked you, and I would be glad to list a few of  
17 them in terms of the voir dire and in terms of  
18 the conversations you had about torture in North  
19 Carolina, and terms of the article you wrote  
20 about how you criticized the military tribunals,  
21 the thousands of questions that any sane person  
22 would do.

23

1           We just can't do those in the context of this  
2           proceeding in the way that the counsel is dealing  
3           with them is currently facing criminal charges.

4

5   **Presiding Officer:** Have you prepared any of those motions  
6           in accordance with the rules of this court?

7

8   **CDC:**       Your Honor, I will go back and I am going to look  
9           at the written emails. I have been looking at  
10          them recently about what you and I went back and  
11          forth on, on the submissions on conflict, and I  
12          think we complied with those rules, but if not,  
13          we will do it all over again. But there is an  
14          ethical issue here that has to be resolved  
15          regardless of motions. So in terms of written  
16          motions, today, we ask for permission to take a  
17          recess now and go deal with them.

18

19   **Presiding Officer:** Okay, I will allow you to reserve those  
20          motions. We are not recessing now but you can  
21          reserve those motions and you are free to make  
22          them in accordance with the POMs, POM 4-3.

23

1 All right, defense has reserved its motions.  
2 Accuse and counsel, please rise.  
3  
4 **CDC:** Accused and counsel or defense?  
5  
6 **Presiding Officer:** Accused and Defense Counsel, please  
7 rise.  
8  
9 [The CDC and CDC2 did as directed. The DC and ACC remained  
10 seated.]  
11  
12 **Presiding Officer:** Major Bradley, stand up.  
13  
14 [The DC did as directed.]  
15  
16 **Presiding Officer:** Binyam Ahmed Muhammad, I now ask you,  
17 how do you plead? Defense counsel may speak on  
18 your behalf, or you may speak yourself.  
19  
20 [Long pause.]  
21  
22 **Presiding Officer:** There being no response----  
23



1   **ACC:**           You can speak for yourself.

2

3   **Presiding Officer:**   There being no response----

4

5   **ACC:**           You're being rude here.

6

7   **Presiding Officer:**   ----there being no response, I will  
8                   issue a plea of:   Not Guilty, on behalf of the  
9                   Accused.

10

11                   You may be seated.   Thank you.

12

13   [All parties did as directed.]

14

15   **Presiding Officer:**   Okay, we will take a 15-minute recess  
16                   at this time and we will reconvene at 1530.

17                   Court is in recess.

18

19   *The Commission Hearing recessed at 1513, 6 April 2006.*

20

21   *The Commission Hearing was called to order at 1721, 6 April*  
22   *2006.*

23

1 **Presiding Officer:** The Commission will come to order. All  
2 parties present when the court recessed are again  
3 present.

4  
5 I want to spend a little more time on this  
6 conflict issue. First let me clarify a couple of  
7 things. It is clear that Major Bradley perceives  
8 she has a conflict.

9  
10 Mr. Stafford Smith, do you also believe that you  
11 have your own conflict of interests issue here?

12  
13 **CDC:** Sir, the issue is in the structure of the Office  
14 of Military Commissions Defense. So, to the  
15 extent that that system doesn't change, the  
16 entire process for us, we, the civilian lawyers  
17 are not directly implicated in a conflict, but  
18 for various reasons that we won't go into, if we  
19 don't change the structure, it is going to taint  
20 his whole, Mr. Muhammad's entire rights.

21  
22 **Presiding Officer:** I will take that as a yes.

23

1   **CDC:**           Well it is a complicated yes.

2

3   **Presiding Officer:**   Okay.

4

5   **CDC:**           The system needs to change.   We have to change  
6                   the system.

7

8   **Presiding Officer:**   Okay, thank you.

9

10                   Professor Marguiles, do you also believe you have  
11                   a conflict of interest issue in this case?

12

13   **CDC2:**         In the same fashion, Your Honor.

14

15   **Presiding Officer:**   Thank you.   All right, despite my long-  
16                   standing directions to the Defense Counsel to  
17                   take appropriate action to address their claim to  
18                   conflict of interest issues, they have not  
19                   secured a determination from an appropriate  
20                   authority that there is, in fact, an actual  
21                   conflict of interests, or that there is an actual  
22                   conflict between the ethical rules in their  
23                   licensing states and the rules governing military

1 attorneys, or attorneys that are practicing  
2 before the Military Commissions.

3  
4 Mr. Stafford Smith has suggested that he thought  
5 the issue had been properly raised before the  
6 Commission. He has also indicated a desire, now  
7 that this misunderstanding I think, has been  
8 identified, a desire to file an appropriate--a  
9 motion for appropriate relief with the Commission  
10 seeking some sort of, at this point, unspecified  
11 relief regarding that issue.

12  
13 I have determined that the most prudent course of  
14 action at this point is to provide the defense an  
15 additional opportunity to do what they should  
16 have done before.

17  
18 Accordingly, I am making the following directions  
19 to the defense: If due to events that have  
20 already occurred, and these directions are given  
21 to each of you separately because you are  
22 separately situated.

1 And so while I can understand there may be  
2 discussion about things, I am going to order a  
3 number of motions here, and I would like them to  
4 come from you each separately with regard to your  
5 different circumstances.

6  
7 I would understand that Major Bradley's would  
8 vary perhaps more from the two civilians, but you  
9 come from different licensing states and there  
10 are different rules involved. So while there  
11 will be some overlap, I understand, we will work  
12 through this issue because it may be that the  
13 determinations are different in each of your  
14 cases.

15  
16 If you feel that due to events that have already  
17 occurred, there is a conflict of interests that  
18 cannot be resolved by any direction that might be  
19 made by this court or anything that would change  
20 some of the structural things you talk about; I  
21 am directing you to file a motion to withdraw, or  
22 in the alternative, provide a brief on why you

1           should continue to represent Mr. Muhammad despite  
2           an irreconcilable conflict.

3  
4           Alternatively, if any of you believe that your  
5           perceived conflict can be cured by a change to  
6           the orders and regulations governing these  
7           proceedings, you should file, again separate  
8           motions, taking into account your separate  
9           situations, with specific requests for specific  
10          appropriate relief that would cure the conflict.

11  
12          I would note that in RE 40, there are statements  
13          like, "There is a big problem here and Colonel  
14          Kohlmann, you've got to fix it." Okay, and that  
15          is not going to get it. You need to first  
16          persuade this Commission that there is, in fact,  
17          a problem, and then you need to describe how it  
18          may be fixed, and then describe why you think I  
19          have the authority to do that. And there are  
20          several hurdles that you will need to get past  
21          with regard to this motion. And you need to  
22          break them down like that.

1 As previously noted, these motions must be  
2 presented in accordance with POM 4-3. And for  
3 witnesses that are required, in accordance with  
4 POM 10-2, and it should be filed, and the  
5 government will have an opportunity to respond,  
6 and any issues that come up along the way; we  
7 will just deal with as they come up along the  
8 way.

9  
10 But, we are going to do it in accordance with the  
11 applicable POMs. I won't say exclusively 4-3 and  
12 10-2, but those are the ones that obviously come  
13 to mind with regard to form, timing, witness  
14 requests, and things like that.

15  
16 These motions must contain a specific proffer of  
17 the facts and a timely submitted witness list, as  
18 I have just described at 10-2.

19  
20 This Commission will not consider a motion of  
21 this significance based on counsel's statements  
22 of alleged facts, and in my view, the defense has  
23 the burden of proof in going forward in

1           demonstrating the facts to support their claims  
2           of problems.

3  
4           Okay now, those two were one or the other. If it  
5           can't be fixed, you either need to file a motion  
6           to withdraw or an explanation of why, even though  
7           it can't be fixed, you should continue in this  
8           case.

9  
10          Or, here is how it can be fixed; now in addition  
11          to the motion--the second motion of about how it  
12          can be fixed, each Defense Counsel is directed to  
13          file a brief which addresses what basis, if any,  
14          would exist for their continuing representation  
15          of Mr. Muhammad if the perceived conflict is not  
16          resolved by this Commission.

17  
18          The reason for this is, if you don't have some  
19          other authority that says there is really a  
20          conflict, that throws it over to me as the only  
21          authority left to determine whether there is a  
22          conflict or not. And, if I determine, and when I  
23          say, "I," I mean the Presiding Officer. If I



1           determine that there is no conflict, or that  
2           there is no way to fix it, or that I don't have  
3           the authority to fix it, well then we are kind of  
4           left with; you think there is a conflict; there  
5           is no authority; you need to go forward; you say  
6           you can't go forward; and we are not just going  
7           to be stuck in Never Never Land.

8  
9           You are going to need to withdraw if you feel you  
10          cannot, in the case of Major Bradley, fulfill  
11          your assigned duties to represent this man, or,  
12          in the case of the civilian counsel, at that  
13          point say I can't do what I agreed to do as far  
14          as complying with the rules of the Commission,  
15          which include the directions of this Commission,  
16          because of an ethical conflict. Because then you  
17          basically will not be able to comply with what  
18          you have agreed to do.

19  
20          And that is why this additional piece has to be  
21          there on you explaining why it is not the case,  
22          that you would have to withdraw despite the fact  
23          that you will be, at that point, saying, "Well

1           since you can't fix it, I can't do anything."

2           And I want that to be submitted at the same time  
3           so we can not have another time lag between the  
4           determination of one matter and then the  
5           following matter.

6  
7           Major Bradley, in your case, it occurs to me that  
8           based on your not following my directions today,  
9           and invocation of the 5th Amendment, you may have  
10          created an irreconcilable conflict of interest in  
11          your own case that trumps all these other  
12          considerations. And that situation is that your  
13          personal interests may be at stake now with  
14          regards to this case.

15  
16          For if you are asserting the right against self-  
17          incrimination with regard to the directions I  
18          have been providing here, it would seem that you  
19          must believe that representing Mr. Muhammad or  
20          participating in this Commission, that were  
21          following the rules of the Commission, has  
22          personal criminal consequences for yourself.

1           And I am not saying that they do. I am saying  
2           that based on your responses, it would seem that  
3           you think that that is the case. Accordingly, in  
4           addition to the motions I have just directed, you  
5           are also directed to file a brief addressing the  
6           issues of whether your personal interests or  
7           stake in the representation of the Accused is a  
8           conflict of interest in your case, and if so,  
9           what measures, if any, are available to cure it.  
10          And if the answer to that is, "None." Then we  
11          are back to why should you not be relieved of  
12          your assigned duties in this case.

13  
14          I am now going to talk about the schedule for  
15          that in just a moment. First, are there any  
16          questions about those directions?

17  
18          Major Bradley?

19  
20   **DC:**           No.

21  
22   **Presiding Officer:** Excuse me?

1   **DC:**           No, I have no questions.

2

3   **Presiding Officer:**   Okay, "No, sir," would be the

4                   appropriate response.

5

6   **DC:**           I am sorry, Your Honor.   No.   No, sir.

7

8   **Presiding Officer:**   Thank you.   Mr. Stafford Smith?

9

10   **CDC:**          No, sir, but I need a transcript so I can make

11                   sure I didn't miss anything, but----

12

13   **Presiding Officer:**   Yeah, I frankly don't know how you go

14                   about doing that, but I am sure there are people

15                   that can talk to you about that.

16

17                   Professor?

18

19   **CDC2:**          No, Your Honor, but I had the same idea about a

20                   transcript, just so we have it right.

21

22   **Presiding Officer:**   Government?

23

1   **PROS:**       No questions, sir.

2

3   **Presiding Officer:** All right, scheduling. Major Bradley,  
4                   would you all like to confer with your fellow  
5                   counsel on how much time you think you need to  
6                   prepare the motion? I am not saying you are  
7                   going to get it, now, I am saying I am going to  
8                   ask you what you think is the appropriate amount  
9                   of time. Do you want to confer?

10

11   **DC:**         Yes, sir. I would like to confer with counsel.

12

13   **Presiding Officer:** Do you need to step out, or can you do  
14                   it there?

15

16   **CDC:**       No, we can do it here. Would it be possible to  
17                   find out from someone how long a transcript would  
18                   take? I would hate to make the court reporters  
19                   life difficult, but----

20

21   **Presiding Officer:** What you are talking about is just that  
22                   little bit that I had?

23

1   **CDC:**           Well that would be helpful, but I think certainly  
2                   for the issue of the conflict of Major Bradley  
3                   and her personal issue, we would need the other  
4                   transcript as well. I hope it wouldn't take too  
5                   long.

6

7   **Presiding Officer:** Does the court reporter have any idea,  
8                   and if you don't, don't answer the question right  
9                   now, because I don't want to tell them one thing  
10                  and then, well----

11

12   **Court Reporter:**       A couple of days, sir.

13

14   **CDC:**           All right, fantastic.

15

16   **Presiding Officer:** Okay.

17

18   **CDC:**           Colonel, if it would be possible, we are talking  
19                   and Mr. Marguiles has a trial and we have  
20                   various--I've got three states, he's got two  
21                   states; if possible, I think 30 days from today  
22                   would work.

23

1 **Presiding Officer:** Okay, and I will remind you in the  
2 agreement that you signed to represent here, that  
3 includes the statement that other matters,  
4 personal or professional, would not be proffered  
5 as a reason to affect the litigation in this  
6 case.

7  
8 **CDC:** Oh, I understand that, sir, it is just that there  
9 are practical realities and so I think--I just  
10 offered that as a practical reality.

11  
12 **Presiding Officer:** And you are suggesting 30 days for the  
13 submission of the briefs?

14  
15 **CDC:** Right.

16  
17 **Presiding Officer:** With the trial after that? Government,  
18 do you wish to be heard on that?

19  
20 **PROS:** Not on that issue, sir. That would be fine for  
21 the government.

22

1 **Presiding Officer:** I am going to put that matter aside for  
2 just a moment and I am probably going to end up  
3 taking a brief recess just to see how that meshes  
4 with other matters on the docket and other cases  
5 that I am not involved in.

6  
7 A couple of other matters. Does counsel for both  
8 sides understand those provisions of Military  
9 Commission Order Number 1 governing protected  
10 information?

11

12 **PROS:** The government does, sir.

13

14 **Presiding Officer:** Defense.

15

16 **CDC:** Your Honor, we certainly read it but I've got  
17 questions. For example, Mr. Muhammad wants a  
18 copy, obviously, of the discovery, and quite  
19 frankly, I don't really understand, in the  
20 context, what we are and aren't allowed to give  
21 him. It seems to me, obvious, that he has a  
22 right to get it, but do we have to redact names  
23 out of it, or what? What's the deal?



1

2 **Presiding Officer:** Right now I am in Section VIII of the  
3 trial guide for this session, which I provided to  
4 both sides.

5

6 **CDC:** All right.

7

8 **Presiding Officer:** And there is a series of one, two,  
9 three, four questions about----

10

11 **CDC:** Right.

12

13 **Presiding Officer:** ----your understanding of the  
14 provisions of the Protective Orders.

15

16 I understand from the defense that they have some  
17 questions regarding the provisions of the  
18 Commission Orders and I am going to ask that you  
19 reduce those questions to writing. That is,  
20 certainly, at this point, different from  
21 objections to them, because that would be the  
22 basis of something that should be brought in a  
23 motion.

1

2

Right now it is just important that you understand the provisions because we need to make sure that you don't violate those provisions, even inadvertently. And, you can submit them to the Presiding Officer and I will see about getting you some answers.

8

9

10

11

12

13

14

15

16

**PROS:** The Prosecution does, sir.

17

18

**Presiding Officer:** Defense?

19

20

**CDC:** Yes.

21

22

**Presiding Officer:** To counsel for both sides, is there any issue relating to the protection of witnesses

23

1           that should be taken up at this time as it may be  
2           necessary to discuss and litigate motions, or to  
3           conduct other business, before the presentation  
4           of evidence on the merits?   Government?

5

6   **PROS:**       The government does have one issue in this  
7           regard, sir, and we spoke to defense this morning  
8           about it.   The government intends, for all  
9           government agents that testify, and other  
10          witnesses to be testifying under pseudonym.

11

12          We wanted to bring that to the attention of the  
13          Commission as soon as possible in the event the  
14          defense attempts to litigate that issue.

15

16   **Presiding Officer:**   Okay, so we are talking about evidence  
17          on the merits?

18

19   **PROS:**       Yes, sir.

20

21   **Presiding Officer:**   Well it sounds like we may have time  
22          for you to file a motion requesting authorization

1           to do that. You should do that in accordance  
2           with POM 4-3, okay?

3

4   **PROS:**       Yes, sir.

5

6   **Presiding Officer:** That will be one of the motions that we  
7           take up at a subsequent session. And right now,  
8           it is kind of one the fence between one of the  
9           law motions and the evidentiary motions. So you  
10          can really submit it at either time. Earlier is  
11          always better. We are going to do law motions  
12          before evidentiary motions, so that would seem to  
13          be the appropriate time for doing that.

14

15   **PROS:**       Aye, sir.

16

17   **Presiding Officer:** For counsel for both sides, as I am  
18          required by Military Commission Order Number 1 to  
19          consider the safety of witnesses and others at  
20          these proceedings, do all counsel understand that  
21          they must notify me of any issues regarding the  
22          safety of potential witnesses so that I may

1           determine the appropriate ways in which testimony  
2           will be received and witnesses protected?

3  
4           And that kind of hits on the thing that we just  
5           talked about, but do understand your  
6           responsibilities to notify me so that I can  
7           fulfill my responsibilities in that regard?

8

9   **PROS:**       Yes, sir, the government understands.

10

11   **Presiding Officer:** Does all the Defense Counsel understand  
12           that?

13

14   **CDC:**       Yes, sir.

15

16   **Presiding Officer:** And I note that Major Bradley is  
17           nodding affirmative.

18

19   **DC:**        Yes, Your Honor.

20

21   **Presiding Officer:** And Professor?

22

23   **CDC2:**       I do, Your Honor.

1

2 **Presiding Officer:** Thank you. The only protective orders

3 that I am aware of that have been issued have

4 been marked as Review Exhibits 21, 22, and 23.

5 Have both sides seen these exhibits? Government?

6

7 **PROS:** May I have a second just to ensure, sir?

8

9 [Pause.]

10

11 **PROS:** Yes, sir. The government is aware, sir.

12

13 **DC:** Yes, Your Honor. The defense understands.

14

15 **Presiding Officer:** Okay, and you have seen REs 21, 22, and

16 23?

17

18 **DC:** Yes, we have, Your Honor, and Mr. Muhammad is

19 looking over them now, as we speak.

20

21 **Presiding Officer:** Thank you. Is counsel for either side

22 aware of any other protective orders, other than

1           those three, that are in existence that I have  
2           not mentioned?

3

4   **PROS:**       The government is aware of none, sir.

5

6   **CDC:**        No, sir.

7

8   **Presiding Officer:** Does either side request that I issue  
9           any other protective order at this time?

10

11   **PROS:**       The government does not, sir.

12

13   **CDC:**        No, thank you.

14

15   **Presiding Officer:** Mr. Stafford Smith, based on one thing  
16           you noted about the voir dire and discussion that  
17           may be had about that in the press, I just want  
18           to remind you that no Review Exhibit can be  
19           released, except for through its release on the  
20           Military Commission's website, and then only in  
21           that form, which will occur in due course. But,  
22           that is the way it needs to occur. Do you  
23           understand that?

1

2 **CDC:** I do understand that. And, we have made a  
3 request. I made a request to Mr. Harvey, and  
4 maybe we have to file a motion on this, but we  
5 would like all of these things made public before  
6 hearings as opposed to after hearing, if  
7 possible. But, we will file a motion on that.

8

9 **Presiding Officer:** If you need to make a motion, then make  
10 one. That is--unless it is put in my lane; it is  
11 outside my lane.

12

13 Mr. Muhammad, I want to clarify one thing with  
14 you. And, then I want to provide you an  
15 opportunity if there was something else that you  
16 wanted to tell me that you hadn't told me, you  
17 can go ahead and do that.

18

19 As you recall, when I when I was talking to you  
20 about your counsel rights, we talked about who is  
21 representing you and your choices about  
22 representations and I wanted to just clarify  
23 something I said, and I don't think it is any



1 different, but I want to make sure that I have  
2 got it right for you.

3

4 Is that counsel that are representing you, which  
5 are these three right here, they file motions and  
6 other requests for relief in this Commission and  
7 will appear at this Commission when conducting  
8 sessions in your case, unless they are excused by  
9 me. And I would only do that after getting a  
10 waiver of their presence by you. Do you  
11 understand the term, "waiver"?

12

13 **ACC:** Yes.

14

15 **Presiding Officer:** Affirmative response?

16

17 **ACC:** Yes.

18

19 **Presiding Officer:** So, unless you say it is all right for  
20 them not to be here, they are going to be here,  
21 okay.

22

1           The other side of that coin is counsel that do  
2           not represent you may not make motions on your  
3           behalf and may not appear before this Commission  
4           on your behalf to represent you.

5  
6           Now as to counsel who serve as advisory--excuse  
7           me, advisory in nonrepresentational capacity;  
8           that is between you and whatever other counsel  
9           might advise you. These advisory counsel may  
10          serve you and your other lawyers as you wish.  
11          However, an advisory counsel who has not been  
12          recognized as one authorized to represent you  
13          before this commission may not make motions and  
14          filings on your behalf and may not represent you  
15          before this Commission.

16  
17          That is nothing different that I told you before,  
18          but I wanted to clarify that. Do you understand  
19          that?

20

21   **ACC:**       Yes.

22

23   **Presiding Officer:** Was there----

1

2 **CDC:** May I have a second?

3

4 [The CDC conferred with the ACC.]

5

6 **CDC:** Colonel, I honestly don't understand what you  
7 said.

8

9 **Presiding Officer:** Okay. In order to file things with  
10 this Commission and make appearances here,  
11 counsel have to be representing. You can't do  
12 one and not the other. You are either  
13 representing him or you are not. I did not want  
14 to leave a false impression, however, that it  
15 means no other lawyers can provide you counsel on  
16 how to do your job, or talk with him, and then,  
17 you know, you can't come see him if that is  
18 allowed by whatever procedures they have for  
19 contact here, which I am not aware of.

20

21 I was just trying to make--I didn't want to leave  
22 here saying that the only lawyers that can work

1           on his case in any capacity at all and provide  
2           any help are you three.

3  
4           You three are the ones actually recognized as  
5           representing him though, and they are the only  
6           ones that can file things with us. But then you  
7           also have to be here unless excused by me, with  
8           his waiver.

9  
10   **CDC:**       Okay, so just to clarify and I think this is an  
11           important point for Mr. Muhammad, for him to make  
12           his decision, and I am just asking for  
13           clarification on this. If Mr. Muhammad decides  
14           that he really does just want some lawyers  
15           perhaps only to be advisory, do I understand you  
16           correctly to be saying that those lawyers cannot  
17           be, "Commission Lawyers," as in they are not  
18           coming to court, well they can be sitting in the  
19           back of the court, but they are not actually  
20           sitting at the table?

21  
22   **Presiding Officer:** Sorry, I am not understanding your  
23           question.

1

2 **CDC:** This is the question, I think. In terms of the  
3 right that Mr. Muhammad is asserting and that I  
4 think he wants to assert, is it possible, under  
5 your ruling, and I am only asking you this to  
6 clarify, is it possible under your ruling for him  
7 to have to lawyers who are Commission Lawyers,  
8 who can therefore visit him, provide him with  
9 advice, and all the rest of it, but who are not  
10 actually sitting at counsel table?

11

12 **Presiding Officer:** No, that is not my ruling.

13

14 **CDC:** No, oh, okay.

15

16 **Presiding Officer:** I have----

17

18 **CDC:** I just wanted----

19

20 **Presiding Officer:** Because I have not considered other  
21 commission lawyers. I just did not want to leave  
22 the impression that the only three people that

1                   can do anything with regard to his case are you  
2                   three.

3

4   **CDC:**           I understand.

5

6   **Presiding Officer:** You three are the ones that are  
7                   representing him and can file, but then you have  
8                   to also be here, which is why we ended up saying  
9                   you are going--in for a penny, in for a pound.

10

11   **CDC:**           Okay and----

12

13   **Presiding Officer:** And you are in.

14

15   **CDC:**           We will file a motion on that, but I just wanted  
16                   to clarify.

17

18   **Presiding Officer:** Okay.

19

20   **CDC:**           Thank you.

21

22   **Presiding Officer:** All right. Mr. Muhammad, was there  
23                   something else that you wanted to tell me? I am

1 not saying you have to, and I am not inviting a  
2 long discussion on anything in particular, but if  
3 there were any questions or things you wanted to  
4 do.

5

6 **ACC:** There is just one thing. He has told me that he  
7 is allowed to see----

8

9 **CDC:** Perhaps I could explain it. My understanding is  
10 that I can't show Mr. Muhammad your responses to  
11 the voir dire questions of your stage. I am not  
12 sure if that is true, but that is what I have  
13 understood. And Mr. Muhammad wants to see that  
14 obviously.

15

16 **ACC:** That is the question I have. Is it possible to  
17 have this information so I can know who is  
18 actually judging me because I am calling him  
19 responsible or reasonable, and I find out there  
20 is questions that we have to ask him, and they  
21 have asked you and I don't have the answers.

22

1           So, I have to make the judgment that the person  
2           who is actually going to convict me is doing it.

3

4   **Presiding Officer:** I understand the question.

5

6   **ACC:**       That is the question I have.

7

8   **Presiding Officer:** I don't have the answer to that right now.

9

10   **ACC:**       You can take----

11

12   **Presiding Officer:** And I ask that the defense submit a  
13           motion stating why you think, pursuant to the  
14           existing Commission Law, you should be able to do  
15           it. It may be a very simple answer. I have just  
16           not thought about it one way or the other to be  
17           honest with you.

18

19           Okay, is there anything else? We are not going  
20           to be able to answer that right now.

21

22   **ACC:**       I don't know if I can be given an opportunity to  
23           talk the next time we meet, because I don't have



1           nothing right now. And since you are reasonable,  
2           and I don't want to say stuff which you probably  
3           don't want to hear right now.

4

5   **Presiding Officer:** That is fine. I can't make any deals  
6           with you. When a time comes where you want to  
7           share something with me, please let me know  
8           through counsel and we will talk about it. It is  
9           not going to happen all the time, and sometimes I  
10          will probably say no. I will try to be  
11          reasonable, but I have to tell you, for the most  
12          part your counsel are doing the representation  
13          here for you.

14

15   **ACC:** I understand that. You said in the morning you  
16          would give me chances to speak, so I take it my  
17          not speaking right now doesn't mean that I am not  
18          going to speak again.

19

20   **Presiding Officer:** I understand.

21

22   **ACC:** So probably I am going to speak the next time.

23

1 **Presiding Officer:** I understand.

2

3 **ACC:** That is all I have.

4

5 **Presiding Officer:** And also on the pro se part, if the  
6 defense wants to make a motion about that, that  
7 is like everything else. If you want to make a  
8 motion, the rule is clear right now. If you want  
9 to make a motion with regard to that, although  
10 the rule is clear in Commission Law right now,  
11 you can make a motion on any number of things.

12

13 **CDC:** May I just ask on that, because we were talking  
14 about it, by "Commission Law," are you referring  
15 to the al Bahlul decision, because I didn't know  
16 of any other rule that was cleared, that Mr.  
17 Muhammad couldn't do stuff other than that.

18

19 **Presiding Officer:** The rule, off the top of my head, that  
20 stands in the way of that is the requirement for  
21 him to have a Detailed Defense Counsel at all  
22 times.

23

1   **CDC:**           But surely that doesn't have anything to do with  
2                   whether he can participate in his case.  It just  
3                   means you have a Detailed Defense Counsel sitting  
4                   here.

5

6   **Presiding Officer:**  Go ahead and make the motion if you  
7                   want to flush that out.

8

9                   Okay, at this point I would like the bailiff to  
10                  provide these copies of RE 44 and 45 to the  
11                  defense, which they indicated earlier that they  
12                  weren't sure if they had seen.

13

14   [The bailiff did as directed.]

15

16   **Presiding Officer:**  And now we are going to take, what I  
17                   hope is a brief recess so I can check on the  
18                   scheduling issue, and then I hope to be back with  
19                   you very shortly on that.

20

21                  And then I think we are going to be about done.  
22                  Court stands in recess on my call.

23

1   *The Commission Hearing recessed at 1801, 6 April 2006.*

2

3   *The Commission Hearing was called to order at 1810, 6 April*  
4   *2006.*

5

6   **Presiding Officer:**   The Commission will come to order.   All  
7                               parties when we recessed are again present.

8

9                               Now with regard to the scheduling issue, here is  
10                              a proposed plan:   All the motions I described,  
11                              along with the witness requests with regards to  
12                              those motions would be due on the 4th of May;  
13                              that is almost 30 days.   The reason that is the  
14                              4th instead of the 5th, is because I just  
15                              generally like to make things due on Thursdays  
16                              instead of Fridays because it is always, in all  
17                              cases, by 1700 Eastern Standard Time, that is  
18                              five o'clock p.m., and I just don't like making  
19                              things due at five o'clock on Fridays, so that  
20                              will be the 4th of May.

21

22                              With responses due on the 11th of May, and the  
23                              responses would also be expected to address,

1           separately I presume, the witness requests that  
2           came along. So the 10-2s with regard to  
3           witnesses, the government needs to respond to the  
4           motion and the witness request at the same time.

5

6   **PROS:**       Yes, sir.

7

8   **Presiding Officer:** And then the replies would be due to  
9           the responses on the 17th of May. That would put  
10          us into the 5 June trial term for litigation of  
11          these motions here.

12

13          Government, does that schedule meet your needs?

14

15   **PROS:**       Yes, sir.

16

17   **Presiding Officer:** Defense?

18

19   **CDC:**        Your Honor, I think it does, but my own practical  
20          silly problem is that I cannot get my electronic  
21          diary into this place, so do you mind if we send  
22          you an email confirming--I mean, the first three  
23          things are fine, but the June 5th.

1

2 **Presiding Officer:** We need to resolve this here and now.

3           What is it that you are missing?

4

5 **CDC:**       My dairy. I can't get it in here because it is  
6           electronic. It is a--excuse me. I seriously  
7           don't think we have a problem, I am always just a  
8           bit nervous because I forget those dates all the  
9           time. Can we agree to it and I will send you----

10

11 **Presiding Officer:** Who can you call to get that  
12           information for you in your office?

13

14 **CDC:**       It is in England. It is now 11:15 at night, so I  
15           don't think there is anyone I can call,  
16           unfortunately.

17

18 **Presiding Officer:** Okay.

19

20 **CDC:**       Can't we just say it is fine and then----

21

22 **Presiding Officer:** Well I am very concerned about  
23           slippage. What we can do is, I am going to order

1           today. Today is Thursday. You need to find out  
2           before we leave Guantanamo. And if we need to  
3           come in here and readjust the schedule, then we  
4           need to do that. Because if I order it, and we  
5           leave here, then that is the schedule and we are  
6           all going to be here.

7

8   **DC:**       Your Honor--um--just thinking about it again, I  
9           don't have my calendar in front of me, but can  
10          you give me the day of June 5th, whether that is  
11          a Thursday or a Friday? The only reason I ask is  
12          that sounds close to a mandatory school I have to  
13          go through with the Air Force.

14

15   **Presiding Officer:** This will take priority over whatever  
16          school you are talking about, I assure you.

17

18   **CDC:**       Thank you.

19

20   **Presiding Officer:** It is just a practice requirement that  
21          all counsel at all times must have their  
22          calendars with them when they come to court.

23

1           The electronic things don't work here, so you  
2           have to have a good old fashion backup and put it  
3           all--print it out before you come here or  
4           something like that and then we won't have this  
5           issue again.

6  
7           Major Bradley, I can tell you the dates, but like  
8           I said, there is a pecking order of priorities  
9           and this case is way above school. The 4th is a  
10          Thursday of May. The 11th is a Thursday of May.  
11          The 17th is a Wednesday in May. And in June the  
12          5th is a Monday in the first full week of June.

13  
14          Mr. Stafford Smith, I need you to bring any  
15          problem to my attention by 0900 tomorrow.

16  
17          Very well, those milestones are ordered by the  
18          Commission. I am going to restate them once  
19          more.

20  
21          The motions that I have directed are due on the  
22          4th of May with accompanying witness requests.



1 Responses are due 11 May.

2

3 Replies the 17th of May.

4

5 The motion will be litigated during the  
6 previously published week of 5 June trial term.

7

8 And again, the filing times are all 1700 Eastern  
9 Standard Time.

10

11 **CDC:** I am sorry to interrupt, but I have just  
12 remembered the 5th of that week I do have a  
13 serious conflict. Would it be possible do you  
14 think to have it at the end of that week on the  
15 Thursday or the Friday.

16

17 **Presiding Officer:** I can't guarantee that and I will go  
18 back to my other point is that when you signed on  
19 to----

20

21 **CDC:** I understand.

22

1 **Presiding Officer:** ----do this, this went to the top of  
2 the list. And, we have made some accommodations,  
3 and I am not holding that against, you, but I  
4 can't keep doing that. The logistics, as you  
5 know, of operating here, can be challenging.

6

7 **CDC:** I certainly know that.

8

9 **Presiding Officer:** So to say that I can always put your  
10 thing at the end of the week, and in this case,  
11 it may be an extended session. I really don't  
12 know how long it is going to take. We are in a  
13 situation, in fact, where we may be here the week  
14 of the 5th and carrying on through the week of  
15 the 12th, which puts us in a position where we  
16 probably want to start earlier in the week.

17

18 Now, if we move everything up, we can do it  
19 during a different week entirely, which would  
20 resolve your concern, Major Bradley, and Mr.  
21 Stafford Smith, during the trial term of 15 May.  
22 But then we can't have the prep time that---you  
23 can't have it all, all the time.

1

2 **CDC:** No, I understand. You know, I am only asking. I  
3 will tell you what is, is that my charity is  
4 sponsored by the Shakespeare Theater and they  
5 have designated June 5th as the day we put on our  
6 night of theater and whatever else, and you know,  
7 it is a big deal for our finances. You know,  
8 that is the issue. If it is possible to work out  
9 that we do it Thursday an Friday, I can do both.  
10 And I just ask your help on that, if that is  
11 possible.

12

13 **Presiding Officer:** I don't know that this will be  
14 possible. As much as it sounds like a good  
15 thing, but just as with Major Bradley's school,  
16 this is way above it in the pecking order.

17

18 So that during that week, you all then should  
19 plan on being here to start the litigation on  
20 Monday.

21 I am anticipating that the travel days are going  
22 to have to be adjusted because we learned a  
23 lesson this week on giving away Monday and how

1           that crunches the schedule. So I think you are  
2           going to see that being adjusted so that we are  
3           working in this room on Mondays in the future.

4

5           Okay, those litigation milestones are ordered by  
6           the Commission.

7

8           Any other matters the government would like to  
9           take up?

10

11 **PROS:**       Not at this time, sir.

12

13 **Presiding Officer:** Defense?

14

15 **CDC:**        No thank you.

16

17 **Presiding Officer:** Very well. We are in recess in  
18           accordance with the established milestones.

19

20 *The Commission Hearing recessed at 1820, 6 April 2006.*

AUTHENTICATION OF  
FINAL SESSION TRANSCRIPT

in the case of:

*United States v. Binyam Ahmed Muhammad*  
a/k/a/ Talha al Kini  
a/k/a Foad Zouaoui  
a/k/a Taha al Nigeri  
a/k/a John Samuel

This is to certify that the pages 1 through 255  
(Authentication page) are an accurate and verbatim  
transcript of the proceedings held in the above styled  
case on March 6, 2006.



Ralph H. Kohlmann  
Colonel, USMC  
Presiding Officer

25 April 2006

DATE